

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

March 20, 2002

9:10 o'clock a.m.

UST POLICY COMMISSION

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Certificate No. 50020

1 THE MEETING OF THE UST POLICY COMMISSION held on
2 March 20, 2002, at 9:10 o'clock a.m., at the Arizona
3 Department of Environmental Quality, 3033 North Central
4 Avenue, Room 1709, Phoenix, Arizona, in the presence of:

5 Michael O'Hara, Chairman

6 Michael Denby, Vice Chairman

 Roger Beal

7 Ian Bingham

 Elijah Cardon

8 Harold Gill

 Karen Holloway

9 Nancy Jamison

 Myron Smith

10 ABSENT MEMBERS:

11 Theresa Foster

Phoenix, Arizona

March 20, 2002

9:10 o'clock a.m.

P R O C E E D I N G S

CHAIRMAN O'HARA: All right. I think we'll get started now. I want to welcome everybody to the March meeting of the UST Policy Commission, and thank you for being here. We've got a very full agenda, so we'll get right into it.

First order of business will be the roll call, starting to my left.

MR. GILL: Hal Gill, here.

MR. BINGHAM: Ian Bingham.

MR. BEAL: Roger Beal.

CHAIRMAN O'HARA: Mike O'Hara.

MR. DENBY: Michael Denby.

MR. SMITH: Myron Smith.

MS. HOLLOWAY: Karen Holloway.

Ms. JAMISON: Nancy Jamison.

MR. CARDON: Elijah Cardon.

CHAIRMAN O'HARA: Thank you.

And we'll move on to Item Number 2, administrative issues. We need to approve the minutes from January and February. Has everyone had the opportunity to review those? Any changes, corrections?

1 Hal.

2 MR. GILL: On January, Number 3 -- the
3 Policy Commission annual report and then under Number 3,
4 Number 4. Do you see where that is? "Mike O'Hara went
5 through the items." And then, "This mandate is addressed
6 in the report." What mandate? Because this is listing
7 different mandates, but that one just says this mandate is
8 addressed in the report. And I don't know what the
9 mandate is.

10 CHAIRMAN O'HARA: The fourth mandate, I
11 would presume.

12 MR. GILL: Is that what the numbers are, the
13 numbers of the mandate?

14 CHAIRMAN O'HARA: Hold on.

15 MR. GILL: It is probably correct.

16 CHAIRMAN O'HARA: Yeah, I think it is done
17 by mandate numbers. There's six mandates.

18 MR. GILL: Number 6 is the mandate numbers,
19 okay. Well, then what is Number 6? What mandate is that?
20 Is there a track number? That was the question that I
21 asked, but I don't know what the ... I guess that -- six
22 deals with the insurance, I guess; or I don't remember.

23 CHAIRMAN O'HARA: You want to get with Karen
24 and try to resolve that? Is it six -- Are there six
25 mandates?

1 MR. BINGHAM: Yeah. We were talking about
2 the last one, and that's about reducing future claims and
3 forcing new tank standards, cost ceilings, increase in
4 co-pay.

5 MR. GILL: Okay. Well, as long as -- Now I
6 see that those six numbers are the six mandates, it makes
7 a little bit more sense.

8 CHAIRMAN O'HARA: Okay. Any corrections to
9 the January minutes? Take a motion.

10 MR. SMITH: I move that the January minutes
11 be accepted as corrected.

12 CHAIRMAN O'HARA: Second?

13 MR. BEAL: I'll second.

14 CHAIRMAN O'HARA: Okay. Motion on the table
15 to approve the January minutes. All those in favor say
16 aye. All opposed. Motion passes.

17 February minutes. Any proposed changes,
18 corrections?

19 MR. SMITH: I move that the February minutes
20 be accepted as reported to us.

21 MS. JAMISON: Second.

22 CHAIRMAN O'HARA: Motion on the table to
23 approve -- made and seconded to approve the February
24 minutes. All those in favor say aye. Opposed. Thank
25 you. January and February minutes are approved.

1 Moving on to Item B, we had a discussion at the
2 last two meetings actually about how to take the minutes.
3 We've gone from the tape-recorder we started out with.
4 Then we had a court reporter for probably the last year.
5 And the last couple meetings, we have had minutes taken by
6 Karen Holloway, summary minutes. I guess we want to put
7 that issue to a vote because it's kind of changed without
8 being formalized.

9 So I would like to get some comments from those
10 who would either like to have the court reporter or would
11 rather see some other form, Karen continue to do it or the
12 tape-recorder. I will open the floor for comment.

13 Mr. Cardon.

14 MR. CARDON: Could we review how much it
15 costs to have the reporter here and to do this?

16 CHAIRMAN O'HARA: Patricia, do you have
17 figures, or Al?

18 MS. NOWACK: I have them. I am not prepared
19 to present them.

20 MS. HOLLOWAY: I think the issue is really
21 whether we can afford to pay the court reporter to
22 transcribe them in the three-day working day limit by
23 which we are supposed to publish our minutes. Maybe the
24 fact that we have a tape-recorder -- I mean, we have tapes
25 of it might, except they are kind of cumbersome to go

1 through. I would be willing to do summary minutes, maybe
2 not even as detailed as I did last time because that took
3 me several hours along with what the court reporter does
4 as kind of a back-up. That might be a compromise.

5 MR. GILL: That's what I was going to
6 recommend. I really like having the detail because even
7 though I didn't vote nay in these, it is just too
8 difficult to take our notes. And there was problems with
9 it, but I don't think -- I don't see it was really worth
10 our time going back and changing those. So I think we
11 really do need the detail. But at the same time, I think
12 a summary that can go out in three days is really all we
13 need, then at the bottom of that summary saying if you
14 need to see the details on any of these items, the notes
15 will be coming out whenever they come out. I think that
16 would meet the requirement.

17 MR. CARDON: So, Mr. Chairman, do we know
18 how much this costs?

19 CHAIRMAN O'HARA: Patricia, do you know
20 if -- We have a \$10,000 budget. Do you know if we have --
21 if that budget is adequate to cover our court reporter --
22 did we use it all last year? -- and any other
23 miscellaneous expenses? Did we go over budget last year?

24 MS. NOWACK: No, we did not.

25 CHAIRMAN O'HARA: I think it is adequate to

1 keep the court reporter. Now, if we go to a three-day
2 turnaround, it is another dollar something a page. So it
3 may push our budget over the limit.

4 The solution that Karen is offering, I think,
5 would maintain the status quo on the budget so we would
6 have adequate budget for a court reporter.

7 MR. SMITH: Michael, maybe we could have our
8 counsel from the AG's office, Laurie Woodall, come and ask
9 whether a tape or a summary of minutes would suffice for
10 the three days followed by a detailed list.

11 CHAIRMAN O'HARA: That would be great.

12 Laurie, do you mind?

13 MS. WOODALL: You have a choice. Whatever
14 you have --

15 MS. HOLLOWAY: Your voice was very soft on
16 that.

17 MS. WOODALL: Shakespeare says that's an
18 excellent thing in a woman.

19 You have a choice. As long as your minutes are
20 available within the three business working days, you can
21 either have a tape or you can have executive minutes such
22 as you have described as long as it meets the requirements
23 of the statute with respect to content, which is contained
24 in A.R.S. 38-431.01(b) which tells you what has to be in
25 there.

1 MS. HOLLOWAY: I know what those are.

2 MS. WOODALL: So to me what has been
3 proposed, having the executive type of minutes that
4 Ms. Holloway would take available within three business
5 working days and to continue to have the court reporter,
6 if you think it is important to have a record, prepare
7 them and submit them, the final transcript, within her
8 normal response time, which I would imagine is about two
9 weeks, would more than meet the requirements of the law.

10 CHAIRMAN O'HARA: Great.

11 Elijah.

12 MR. CARDON: Mr. Chairman, with the
13 Department checking as meticulously as we would like them
14 to on all submittals of all claims and this whole drill
15 that we're involved in, I just don't see how -- I mean, we
16 can't find out how much this costs? I mean, I would like
17 to know how much it costs.

18 MS. WOODALL: Excuse me.

19 MR. CARDON: I understand there are two
20 areas that are -- into which the cost is divided. One is
21 having a court reporter here present to transcribe --
22 "transcribe" may not be the right word -- take down what
23 is actually said, and then the second cost would be how
24 much it costs to take that and to transcribe it into a
25 printed page. Am I correct in that?

1 MR. SMITH: Hal, I believe there is one cost
2 for both sides. When I was a chairman, we paid a cost per
3 month for the court reporter to be here to take down the
4 minutes and then to transcribe them in two weeks that were
5 put out to all of us. So it is one cost.

6 MR. CARDON: I would sure like to know what
7 that is.

8 MS. WOODALL: Could we maybe go off the
9 record a minute and ask the reporter because she might
10 have an estimate.

11 (Whereupon, an off-the-record discussion was
12 held.)

13 CHAIRMAN O'HARA: Back, please.

14 MS. WOODALL: The record should probably
15 reflect that we've had an off-the-record discussion with
16 the court reporter who was kind enough to give us a rough
17 idea of costs.

18 CHAIRMAN O'HARA: That would be great.
19 Thank you.

20 MS. NOWACK: I would be more than happy to
21 get that information and present it at the next Policy
22 Commission meeting. Just from the agenda items that I
23 saw, there was no discussion with me about the requirement
24 to have this information readily available. I don't know
25 it off the top of my head.

1 CHAIRMAN O'HARA: I sent you -- Al and you
2 both an e-mail saying, Can I get these cost figures? Al
3 responded. Maybe you looked underneath it, didn't see
4 your name.

5 MR. JOHNSON: It was, like -- for the
6 three-day turnaround, I believe it is an extra \$1.25 per
7 page, okay? And so there is -- like she said, there is
8 some standard costs that you pay just for having the
9 court reporter here and preparing everything. And then
10 there is a per-page cost. And so there is a baseline cost
11 and then add another \$1.25 for three-day turnaround.

12 CHAIRMAN O'HARA: Go ahead, Elijah.

13 MR. CARDON: Mr. Chairman, there is two
14 reasons I would support having a court reporter here and
15 having that transcribed. Number one, I think the cost is
16 within reason for the body and the scope of work that
17 we're involved in. And I understand that cost to be
18 approximately \$30 an hour during our meeting and then
19 approximately three plus dollars a page to have the
20 meeting transcribed into print. I think that's
21 reasonable.

22 The second reason is I believe that the detail
23 of the individual expressions of the committee are
24 important to record so that they are not lost in
25 generality with respect to the feeling of this group in

1 advising the Department.

2 CHAIRMAN O'HARA: Any comments on the other
3 side that do not want a court reporter? There were some
4 concerns at the last -- two meetings ago about the ability
5 to express yourself freely. I don't know if those
6 feelings are still -- Roger.

7 MR. BEAL: I still have those feelings. I
8 believe that by having a court reporter document, that
9 there is a tendency to feel manipulated into saying things
10 in a way that people can be held accountable for by
11 everybody in the room. And I think in fear of that, we
12 override the purpose of the conversation which is to make
13 the system work better in whatever we're talking about at
14 the time.

15 I would have no problem if the official minutes
16 were the summary minutes and we had a court reporter for
17 the detail, should we need to back up. But I feel that to
18 have an official stance coaxed out of us by whatever
19 because of the detail, I think, impedes our progress to
20 resolving things. And I feel that we have a lot of people
21 here today because things are going to be discussed and
22 happen. So -- And I appreciate reading the shorter
23 summary notes in less time. Thank you.

24 CHAIRMAN O'HARA: I, too, really enjoy
25 reading the shorter notes. I think Karen has done a great

1 job the last couple of weeks encapsulating most of the
2 comments. I also like the idea if we can get both. It
3 solves both issues.

4 MS. JAMISON: Mr. Chairman, my comment would
5 be that I tend to agree with Mr. Beal. I don't believe
6 that it's common at all for a body like this to have a
7 court reporter for the purpose of taking minutes.

8 I recognize the validity of Mr. Cardon's concern
9 as well. But as far as advising DEQ, I would think that
10 most of our advice to DEQ would be given in writing when
11 we do actually give official advice to the director.

12 CHAIRMAN O'HARA: Right.

13 Laurie, you are on a board. You're head of a
14 board. Do you guys take minutes? How do you do your --

15 MS. WOODALL: I'm the chairman of the
16 Arizona Power Plant and Transmission Line Siting
17 Committee. And the terms of our statutory scheme and our
18 regulations require that we have a certified court
19 reporter transcript. But I have represented other
20 multi-member boards for the Solicitor General's Office,
21 and very few of them have court reporters there. Most of
22 them use a tape-recording device.

23 Then they have the tapes that are on file.
24 Those constitute the minutes. And then if there is a
25 member of the public who wants to know what happened at

1 the meeting, they come in and they listen to the tapes.
2 But that's most of them. There are some exceptions. I
3 know, for example, the Board of Medical Examiners, when
4 they have proceedings, they'll have a court reporter. And
5 it is unusual not in any peculiar sense but in the
6 number -- yeah, it is not common.

7 CHAIRMAN O'HARA: Okay. It's going to be
8 hard to reach a consensus on this issue. We may have to
9 put it up to a vote. Is there any other discussion? A
10 motion?

11 MR. SMITH: Maybe one more little point. If
12 this tape-recorder can duplicate enough of the record as
13 the court reporter, it might be an option for us to try
14 for the next couple of meetings.

15 MR. GILL: The difficulty with the
16 recording, if you are truly trying to go in and find
17 something, which I have had to do numerous times -- I've
18 been asked by people I have represented as well as
19 owner-operators to look up certain things. If it is in
20 print, I can just go through and find the individual
21 speaking. If it is on the tape, I am going to have to
22 listen to the entire tape up to the point to where --
23 whatever I'm trying to find, if I even know where that
24 happened to have been in the meeting. It is all going to
25 be there, granted; but it is very difficult to find what

1 you are looking for if you are trying to look up
2 particular items of discussion.

3 MR. DENBY: Aren't you getting paid for
4 those hours that you are looking it up, though, Hal?

5 MR. GILL: No.

6 MR. DENBY: I would get paid.

7 MR. GILL: Unfortunately, I don't.

8 CHAIRMAN O'HARA: The real issue seems -- on
9 the table is do we need a court reporter? It is almost a
10 yes or no. Is that the issue to vote on?

11 MR. BEAL: I think it can be in what format
12 are minutes going to be, whether they are summary, the
13 official minutes are by Karen with the augmentation of the
14 court reporter for detail, if we feel that we need to have
15 that type of detail. There is many ways that we can go
16 here, or we can make the official minutes the
17 court reporting minutes. I think those are some things
18 that we should resolve first.

19 MS. JAMISON: I wonder if something like
20 this would work as a proposal, and maybe we don't need to
21 take a formal vote this time. But for next month's
22 meeting, how about if we look at the cost of the
23 court reporter over the past year, look to see what it
24 would likely represent to have the court reporter do the
25 three-day turnaround. And then we would be able to make

1 an evaluation next month unless people are ready to decide
2 now.

3 MR. CARDON: Comment.

4 CHAIRMAN O'HARA: Elijah.

5 MR. CARDON: If there is additional
6 information that any member of the board might like with
7 respect to the cost or with respect to the function, I
8 don't see it as any kind of a critical thing that we have
9 to act today. I mean ...

10 CHAIRMAN O'HARA: We've got the
11 court reporter here today, and we've got the voice
12 recorder. I would urge proponents of the court reporter
13 to also listen to the tape after this meeting to just see
14 if it fit -- suits the needs that you have to have a
15 detailed record, if it is adequate.

16 MR. CARDON: Mr. Chairman, I have been
17 involved in other settings similar, not like but similar,
18 to this. And it is a very laborious and almost unworkable
19 thing to listen to a tape without a transcription of a
20 meeting. That's real work and time consuming.

21 CHAIRMAN O'HARA: Okay, great.

22 Let's -- Patricia, at the next meeting, could we
23 get some information on what it cost this last year in
24 whole?

25 MS. NOWACK: Certainly.

1 CHAIRMAN O'HARA: Great. Thank you very
2 much.

3 And we'll take this issue up again at the next
4 meeting, if that's --

5 MS. NOWACK: I actually might be able to
6 have it before the end of this meeting.

7 CHAIRMAN O'HARA: Okay. If we have time,
8 we'll take the issue back up.

9 Thank you, Patricia.

10 MS. HOLLOWAY: I have a question. Would you
11 still like me to do some summary minutes?

12 CHAIRMAN O'HARA: Yeah. I think under
13 either proposal, the way I understood it, you were going
14 to do a summary.

15 MS. HOLLOWAY: I know some of us, less --
16 especially me, less technical -- with less technical
17 background, it is hard for me to find the essence when I
18 look through a 100-page transcript.

19 CHAIRMAN O'HARA: Maybe we'll keep this in
20 any event. Thank you for offering, Karen.

21 Okay. Moving on to Item C -- 2C.

22 MR. PEARCE: Mike, call to the public?

23 CHAIRMAN O'HARA: I'll take public comment
24 on that particular issue if someone would like to say
25 something on the subject of the court reporter and how we

1 make our minutes.

2 MR. PEARCE: John Pearce. The issue came up
3 last time about where would the money come from, which is
4 actually a bullet point that we just kind of skipped over.

5 I researched that. And in Chapter 131, Section
6 8 of the bill that was filed in the Office of the
7 Secretary of State, April 4, after being approved by the
8 Governor on that same date, April 4, 2000, I will just
9 read, "The sum of \$10,000 was appropriated for the
10 Underground Storage Tank Revolving Fund Assurance Account
11 in fiscal year 2000-2001 to the DEQ for the purpose of
12 paying the administrative costs associated with the
13 operation of the Underground Storage Tank Policy
14 Commission."

15 So there seems like -- unless that \$10,000 has
16 been spent somehow on costs since less than two years ago,
17 that money ought to be available to pay for this. This
18 exactly seems to me an administrative cost of the Policy
19 Commission.

20 CHAIRMAN O'HARA: Is that 10,000 annually?

21 MR. PEARCE: It is 10,000 that was
22 appropriated in fiscal year 2000-2001 for purposes of
23 paying the expenses. It doesn't have a sunset date, and
24 it doesn't -- it has -- the appropriation is exempt from
25 the provisions of lapsing from appropriations. So I would

1 read that to mean that money is available until it is
2 spent.

3 CHAIRMAN O'HARA: That's what you are going
4 to find out for us, right, Patricia?

5 MS. NOWACK: That's exactly what we have
6 been paying the court reporter expenses out of; and, also,
7 travel expenses for Policy Commission members come out of
8 that appropriation. That's the second appropriation that
9 was given to the Policy Commission. And like I said,
10 probably by the end of this meeting, I'll have an
11 accurate --

12 CHAIRMAN O'HARA: Does that replenish, or is
13 that a onetime 10,000?

14 MS. NOWACK: There was two appropriations
15 made to the Policy Commission. The first appropriation
16 has been used completely up, and we are just now working
17 on the second appropriation.

18 CHAIRMAN O'HARA: All right. Thank you.

19 Thank you, Mr. Pearce.

20 Any other comments?

21 MR. BEAL: I just wondered if it would be
22 appropriate or if we could just see from the audience how
23 many people look at the minutes and what form they would
24 prefer it in.

25 CHAIRMAN O'HARA: Ask the question then.

1 MR. BEAL: Just for my own information and
2 to get a feel of how you as the public view the minutes,
3 is there one form or the other -- And I'll just ask for a
4 show of hands, if you don't mind, so that I would have an
5 idea of how valuable one form or the other is. I know it
6 is not your position to determine this, but I'd sure like
7 to know how you feel about it.

8 So for those of you that would like the official
9 minutes to be in the court reporter format, would you
10 please raise your hand. Okay. For those of you that
11 would like it in another format, please raise your hand.
12 There is an awful lot of people that don't care.

13 MR. DENBY: You didn't ask about the Karen
14 minutes, the other format.

15 MR. BEAL: In another format, for example,
16 Karen Holloway doing an official summary.

17 MR. CARDON: Mr. Chairman.

18 CHAIRMAN O'HARA: Yes, Elijah.

19 MR. CARDON: Roger, I think it would be
20 important to -- You just asked for an indication from the
21 public, but I would like to see what that -- if we could
22 somehow determine what segment of the public that vote is
23 from. I notice that perhaps the Department was on one
24 side and the private sector was on the other side of that
25 question. And that would be very interesting to me to

1 see.

2 MR. JONES: My name is Greg Jones. I am a
3 member of the regulated community and the public. And I
4 believe absolutely that court reporting and transcribing
5 what's done here is critical.

6 CHAIRMAN O'HARA: Thank you.

7 Did you want --

8 MR. CARDON: Could we simply do that one
9 more time and find out who is from the regulated public
10 and who is from the Department because I think that there
11 is a clear division there, it seemed to me.

12 MR. DENBY: I didn't think it was that
13 clear.

14 MR. SMITH: Elijah, I don't think -- And
15 correct me if I'm wrong. I don't think the Department
16 raised their hand.

17 MR. BINGHAM: I don't think voted.

18 MR. SMITH: I think they abstained.

19 CHAIRMAN O'HARA: I think a lot of people
20 didn't want their votes either. I think there was clear
21 support for both. Looked like seven or eight hands for
22 court reporter and several hands for alternative. There
23 is support for both.

24 MR. CARDON: So you don't want to find out?

25 CHAIRMAN O'HARA: It is your question.

1 MR. BEAL: Thank you. You're as divided as
2 we are.

3 CHAIRMAN O'HARA: When we get the
4 information from Patricia, we may have the opportunity at
5 the end of this meeting to take this back up. Otherwise,
6 we will take it back up at the next meeting.

7 MR. SMITH: I think Patricia has the
8 information.

9 CHAIRMAN O'HARA: Patricia, do you have that
10 information? Okay. No problem.

11 We will move on, unless there is other comments,
12 to Item 2C, which is the discussion of utility of using
13 public speaker slips to enhance public comment. This was
14 a suggestion that was brought to me. And I think in most
15 of the legislative meetings they have speaker slips you
16 may be familiar with. You actually write down your name
17 and comment. You don't necessarily have to speak. You
18 can just submit a slip and have your comment known without
19 making a public speech.

20 Would the Commission members feel like that
21 would be -- enhance our meetings, enhance the public
22 comment? Is it a good thing? Is it something we need?

23 MR. DENBY: My comment would be that it's
24 not a good thing unless we really want to stilt the
25 process. Every time I have been to a meeting with speaker

1 slips, you speak on your speaker slip; and then when
2 you're done, you're done. And you don't necessarily get a
3 free-flow exchange that I think we get a lot of here,
4 which would mean Patricia would have to submit, like, 50
5 speaker slips each meeting.

6 CHAIRMAN O'HARA: I think part of the reason
7 for that was depending upon how we did minutes. It may be
8 difficult for the minute recorder to pick up the comments.
9 So we were either going to have them come up here and
10 speak into a microphone. Can I ask the court reporter --
11 I don't know if we have to go off the record.

12 (Whereupon, an off-the-record discussion was
13 held.)

14 CHAIRMAN O'HARA: Any other comments or
15 suggestions?

16 MR. SMITH: I would comment with Michael,
17 that I think there has been a free-flow discussion without
18 speaker slips. I would recommend that we not go that
19 route yet.

20 CHAIRMAN O'HARA: Any other comments?

21 MR. GILL: I agree.

22 MR. DENBY: That doesn't mean that somebody
23 can't submit a written comment to us if they don't want to
24 speak.

25 MR. GILL: To me, I don't think it enhances

1 it at all. I think it is just the opposite because a lot
2 of times, you just -- many of the people may not want to
3 take the time to submit the slip.

4 CHAIRMAN O'HARA: Are there any members of
5 the public who would like to comment on any of the
6 administrative issues that we've gone over at this point?
7 Okay. Great.

8 Moving on to Item 3, discussion of UST
9 legislation for the year 2002. This item was on the
10 agenda at the last meeting, and I think we requested some
11 additional information in the form of briefing papers.
12 And I think we've gotten quite a bit of information from
13 several sources, which I've tried to distribute to the
14 Commission members.

15 Some things came directly from stakeholders to
16 me, and I don't know if they got to you. I received them
17 yesterday. Hopefully all of the members have been able to
18 look at those and are prepared to discuss them.

19 Senate Bill 1338, would anybody like to -- and
20 I'll include members of the public, would anybody like to
21 give us a synopsis of this bill and what it does?

22 MS. JAMISON: Mr. Chairman, my understanding
23 is that it's still a work in progress. But I think we
24 have received at least a couple of letters expressing
25 concerns about the wisdom of making the changes that have

1 been proposed with respect to the issue of cost
2 effectiveness and so forth. I'll leave my comments at
3 that.

4 MR. DENBY: If I could say something. Just
5 from reading the e-mails that I got, I see three main
6 pieces to the comments that people made here, which I'm
7 presuming means three main pieces to the legislation. One
8 is the incumbrance, the excess amount that's encumbered,
9 and whether that is to be paid on work outside the scope,
10 that issue, which was an older issue, I think is being
11 resolved.

12 Sounds like there is a question about the -- at
13 least from some of the letters we've gotten, some question
14 on the reasonableness, if I should use that word, of the
15 change to 1005(d).

16 And then the third issue that seems to come up
17 in one of them was a question about co-pay amounts, which
18 seems to be not necessarily in the legislation but seems
19 to be jumping out at us somewhere.

20 Those are the three issues I saw as coming out
21 of this thing. I don't know if anybody thinks there is
22 more in there.

23 CHAIRMAN O'HARA: Mr. Pearce.

24 MR. PEARCE: John Pearce again from the
25 regulated community. I would say that there are three

1 pieces in the legislation. I would agree that it's work
2 in progress, but the work is pretty much coming to an end.
3 The concepts are essentially, I would say, at this point
4 set. I would not anticipate there being additional
5 concepts unless the Department feels it would be
6 advisable.

7 And those three concepts are as follows:
8 Number one, to address the issue that Mike Denby mentioned
9 about the encumbrance of funds under pre-approval, whether
10 it makes sense to have an electronic payment process that
11 has been developed by FSU or whether it's simply better to
12 go ahead and pay amounts submitted under pre-approval
13 pursuant to the language that's in our 18-12-607.01.

14 And before the statutes clouded the issue, the
15 effort on this first issue is to minimize the oscillating
16 factor when you are submitting costs under pre-approval,
17 allow costs under pre-approval to be paid under the
18 pre-approval as long as they are within the cost ceilings,
19 as long as they are within the total pre-approval amount.
20 That is the essence of that issue.

21 The idea is to avoid bureaucracy involved when
22 you have costs that are not exactly what's in the
23 pre-approval when you are forced to shift in the field and
24 forced to do things a little differently to achieve the
25 objective under the pre-approval.

1 We are very eager to meet with the Department to
2 get language that the Department feels comfortable with on
3 this issue. We cannot achieve our objective on this point
4 without the Department's participation. And we are
5 hopeful that today, as a matter of fact, this afternoon,
6 we'll have a meeting that will allow us to get the
7 language to a point where the Department can be
8 comfortable with it.

9 I'm not aware of any concerns. I have not been
10 privy to the e-mails or correspondence that you may know
11 of, that have concerns about that particular aspect of the
12 bill. I hope there aren't too many concerns. I think it
13 is in everybody's best interest to try to simplify so we
14 can avoid the confusion.

15 The second part of the bill as it's presently
16 drafted and as I would anticipate it would be continuing
17 forward is to make a small change in language to clarify
18 that when you have already submitted something in writing
19 to DEQ, you don't need to resubmit it in the work plan in
20 order for the work plan to be accepted by the Department.

21 This is a by-product of a strict reading of
22 R-18-607.01 which requires that a work plan essentially be
23 self-sufficient and contain all of the data and
24 information in its body even if that information was
25 previously submitted. The concept that was discussed with

1 DEQ management that at least DEQ -- some people with DEQ
2 management did not have a problem with, okay, if it is
3 submitted in writing previously and it is referenced in
4 the work plan, then let it be so that that work plan is
5 okay. We don't need to go ahead and resubmit the
6 information again.

7 The third part of the bill as it's presently
8 drafted would be the 49-1005(d)(3). Previously 49-1005(d)
9 was struck all together. And the Senate natural
10 resources/environment amendment was changed so that only a
11 portion of 49-1005(d) was struck, and that is the portion
12 found in 49-1005(d)(3). And only a portion of that was
13 struck and only those portions that talk about cost
14 effectiveness.

15 The idea here is let's not confuse the technical
16 review and the financial review when corrective action
17 alternatives are being proposed. Let's have the review be
18 technical -- about the appropriate technical approach
19 without the need to present overly detailed information
20 about how much each of those different technical
21 alternatives will cost. In other words, let's try and
22 avoid pricing out every single technical alternative when
23 a technical work plan for corrective action is proposed.

24 It is not to say the Department shouldn't use
25 its judgment about cost effectiveness per se. But there

1 is other portions of statute in the act that allow it to
2 certainly do that and, also, of course, judge the cost
3 under the cost ceilings. So it is an effort to address
4 some common denials that have sprung up in the last year
5 in the 49-1005(d)(3) that sort of would be to a premature
6 cost analysis when it is thought by the regulated
7 community that the analysis at that point ought to be, all
8 right, which of these technical alternatives is the right
9 one without needing, for example, to go out and get bids
10 for every single alternative when two of the three are
11 going to be rejected.

12 People are finding it difficult to get those
13 bids at this point because no one is going to give a bid
14 when they know that they are not going to do the work
15 because the work isn't going to be the choice alternative.
16 That's the kind of thing we are trying to get at.

17 Those are the three issues in the bill right
18 now. The concepts are, again, pretty much established. I
19 think it would be appropriate for the Policy Commission to
20 take some discussion and maybe some action on the concepts
21 in favor of or express some concerns with, as the case may
22 be, whatever the vote is. But language is not yet
23 complete, but I would urge the bill.

24 MR. BINGHAM: I didn't hear that last --

25 MR. PEARCE: The language is not yet

1 complete because the Department -- some people in the
2 Department have not yet had a chance to look at it.
3 Again, we are hopeful that will happen today. But
4 assuming the language is workable, then I would think it
5 would be appropriate for the Policy Commission at this
6 time to take some vote on the propriety of the concepts
7 because the bill is moving forward now much more quickly
8 than it was as of a month ago.

9 It is about ready to get out of the Senate. By
10 the time you meet again, the bill will be deep into the
11 House of Representatives, if not possibly out of the House
12 of Representatives. So this is probably the best and only
13 opportunity to take meaningful comment on this bill.

14 CHAIRMAN O'HARA: Thank you, John.

15 Is there anyone from the Department that's
16 prepared to give the Department's feeling about the bill,
17 at least the three concepts?

18 MR. BINGHAM: I guess that's me. I will
19 agree with John that the language is not set and that this
20 is still a work in progress. We do have a meeting this
21 afternoon scheduled to discuss some of the proposed
22 languages. The Department still has some concern with how
23 the amendment is written and what the long-term
24 implication would be to this language.

25 MR. DENBY: All three concepts, everything?

1 What's -- You are probably not at liberty to speak on
2 that.

3 MR. BINGHAM: Personally, I have not really
4 had a lot of conversation internally with the agency and
5 other parts of the program regarding this bill. Many of
6 us were gone last week and just saw it Monday for the
7 first time and have not really sat down even internally.
8 So I have my own personal. I cannot speak to other
9 people's -- any others.

10 CHAIRMAN O'HARA: Anybody else on the
11 Commission? Gary -- Greg.

12 MR. JONES: Greg Jones. I have the
13 impression, or if you could tell me incorrectly -- that
14 I'm incorrect, that that bill has already been voted on by
15 the Senate committee, that DEQ was supposed to instruct on
16 what their point of view and so forth last Friday. And
17 now it's to the floor of the Senate. So what changes can
18 be made now anyway unless somehow you go directly to the
19 floor because the committee already voted 7 to 1 for it as
20 amended. Now, that's just what I hear. Somebody can tell
21 me that I'm incorrect. I would love to hear it.

22 CHAIRMAN O'HARA: John, do you --

23 MR. PEARCE: You're thinking -- John Pearce
24 again. You are thinking the right thing, Mr. Jones. The
25 action would have to take place on the floor. And the

1 Senate staff is poised to draft a floor amendment that
2 would make these final changes to the bill. The exclusive
3 reason for making a floor amendment is to get language
4 that the Department is more comfortable with. And the
5 only reason that hasn't been done before now, i.e., in the
6 Senate natural resources/environment committee is because
7 some of the people from DEQ were not available to go over
8 the language in the bill, as Ian mentioned, last week.

9 So a floor amendment is what's contemplated to
10 clean up the language so that DEQ hopefully is comfortable
11 with it.

12 MR. JONES: Is that much more of a difficult
13 thing to do for the Department to handle a floor amendment
14 than directly to the committee that's responsible for
15 overseeing that type of submittal?

16 MR. PEARCE: Not as long as it is a
17 consensus amendment.

18 CHAIRMAN O'HARA: Would the Commission
19 members --

20 MR. JONES: I would like to say one more
21 thing in regards to the Senate bill. I transmitted a
22 short little letter and comments to the committee members
23 a little late yesterday, and I apologize for that. I do
24 have copies of it I could give to any committee member
25 that may not have it or to anybody here that would like to

1 see it.

2 And it is to the chairman, and it is just in
3 regards to some of the things I believe need to be
4 addressed in regards to not just the Senate Bill but the
5 SAF in general that can wait till the end of your agenda.
6 But I would like to, with the chair's permission, either
7 hand this out to the committee members or to the general
8 public or regulated community.

9 CHAIRMAN O'HARA: Sure. Has the committee
10 gotten that yet or not? I got it via e-mail last night.
11 I think everyone here has gotten it.

12 MR. SMITH: Yeah.

13 CHAIRMAN O'HARA: Feel free to leave it.
14 Oh, Roger.

15 I read your letter, and I read several others.

16 MR. JONES: And my main comment --

17 CHAIRMAN O'HARA: Hold on one second. Go
18 ahead. Do you want to finish your comment?

19 MR. JONES: Yes. My main point is --
20 Obviously, I asked a lot of different questions; and I
21 don't expect them all to be answered immediately,
22 et cetera. I just want to bring up the point that in
23 these times with the state in fiscal need and programs
24 being axed, et cetera, why would we want to strike
25 "reasonable" and "necessary" and "cost effective" from

1 corrective actions on this kind of program which is just
2 further hampering DEQ from accomplishing their mission.

3 Obviously things in the SAF aren't right, and
4 we're trying to move in the direction of improving it but,
5 to me, at the sacrifice of cost effectiveness and, to me,
6 the savings that the state can realize if this was
7 administered more in line with, say, a state lead contract
8 where that millions of dollars could be saved.

9 I'm part of the regulated community. I manage a
10 drilling outfit. We're small business. The risks to our
11 business now in doing this kind of work are great. You
12 may get good numbers, but you may not get paid. Or the
13 people that are getting to do the work may go bankrupt.
14 Or in this case, I feel that the fund being in the red has
15 an ability to become insolvent. And then the trickle-down
16 effect is going to leave the small businessmen or
17 subcontractor out because he's not aware of the contracts
18 between responsible parties and consultants.

19 They -- the subcontractor may have the contract
20 with the consultant or RP. But if the state goes
21 insolvent and stuff, they're out of luck. And small
22 businessmen typically can't afford an attorney to go down
23 to the state and fight with them to get some money out of
24 a fund once it's become insolvent.

25 So in short, that's just my comments. I believe

1 it's the state's responsibility to at least exhibit some
2 sort of physical sanity related to the program. And I
3 believe this bill just adds to the inability of DEQ to get
4 it right. Thank you.

5 CHAIRMAN O'HARA: Thank you.

6 MS. WOODALL: Mr. O'Hara, is it your desire
7 that this gentleman's letter be marked as an exhibit for
8 purposes of reference to the transcript?

9 MS. HOLLOWAY: I included it in the minutes.

10 MS. WOODALL: My recommendation would be
11 that you have it so marked, since it has been passed out
12 and provided.

13 CHAIRMAN O'HARA: We get quite a few letters
14 also from everybody. That also should go in the
15 transcript?

16 MS. WOODALL: My recommendation is based on
17 the fact that we are talking about a piece of paper in the
18 transcript; and later on, someone reading the transcript
19 would want to know what that piece of paper was. The
20 court reporter can have it marked accordingly, if that is
21 your desire.

22 CHAIRMAN O'HARA: That would be great.

23 MS. WOODALL: I would propose the court
24 reporter mark the letter dated March 19th, 2002, as
25 Exhibit 1 to these proceedings.

1 CHAIRMAN O'HARA: Thank you. Good
2 suggestion.

3 I'd like to go to comments. I want to kind of
4 look at these concepts in general, the three of them. We
5 can call them individually.

6 MR. DENBY: Yeah.

7 CHAIRMAN O'HARA: The first one seems -- I
8 guess you can phrase it any way you want. The way I
9 understand it. It came out of the letters also for most
10 of the people I received comments on. First concept is
11 making the process easier. Is that -- would that be a
12 fair --

13 MR. PEARCE: This is the encumbrance issue?

14 CHAIRMAN O'HARA: It is. And it deals with
15 the conform issue that we had a presentation on several
16 meetings ago about the interpretation of that word
17 "conform" has made it much more difficult to get that
18 pre-approval claim process in force. I believe Patricia,
19 if I remember what she said, broke out one claim into
20 several claims or at least two claims, one part that was
21 conformed and one part that didn't conform. So it made a
22 lot more administrative work for both the Department and
23 for the consultants.

24 So it seems to me if the language of the bill
25 alleviates that and makes the process more simple, that

1 both the Department and stakeholders would be in favor of
2 it. It wouldn't cost any more money. In fact, it should
3 save money from duplication of the administrative effort.
4 Is that a fair synopsis?

5 MR. DENBY: I would add the three, I think,
6 e-mails that I saw that came through on this didn't seem
7 that anybody besides the Jeff Trembly e-mail -- and even
8 that was not necessarily a critique of the encumbrance
9 issue. It was a critique of DEQ first and, if need be,
10 let's do the encumbrance issue as set forth in
11 legislation. I haven't seen anybody talking against the
12 encumbrance issue as it's put forth in legislation or the
13 e-mails. And I may be wrong. There may be somebody out
14 there who has a problem with the encumbrance issue, or
15 maybe I'm right.

16 CHAIRMAN O'HARA: I think anything in
17 general that makes the process easier, both DEQ and
18 stakeholders would be in favor of it. If the concept is
19 structured properly in this bill -- But we're not -- I
20 don't think we should vote on the bill because it is not
21 finalized. Just maybe look at concepts.

22 MR. DENBY: I think the concept -- I will
23 say my two bits about it. I think the concept makes a lot
24 of sense. It was the original intent of R-18-12-607.01(o)
25 when it was originally drafted, the rule to provide this

1 safety valve for things that are not line items or in lock
2 step with the work plan but that make sense and are within
3 the encumbrance because they take so much time to get to
4 and then they have to come around and do it again. It
5 makes logical sense if it is there, pay up, be done with
6 it.

7 CHAIRMAN O'HARA: Any contrary views on the
8 first concept? Anyone disagree with that concept, if it
9 is adequately described?

10 Let's move on quickly to Item 2, one I really
11 hadn't heard of. It sounds like common sense. But the
12 issue is does a work plan have to be -- do you have to
13 repeat information you previously already submitted? Is
14 anyone -- does that accurately describe it? You submit it
15 one time and then you just reference it later. Is that a
16 consensus concept?

17 MR. DENBY: I'll --

18 CHAIRMAN O'HARA: Go ahead.

19 MR. DENBY: My two cents on it is in my
20 knowledge of what little is going on here is that they are
21 trying to reduce some of the burden of submitting
22 additional documents. I think to the extent that the
23 documents are already in ADEQ's files and can be
24 identified as a simple cross-reference, the Department
25 doesn't have to spend ten days trying to like for a

1 mysterious document. If it is easily cross-referenced and
2 they can find it in their files, I don't see any reason
3 why we need to kill more trees just to do that.

4 But if the Department has some procedural
5 mechanism that I don't understand that would cause a
6 problem with that and you can't identify -- you can't
7 adequately identify these things, then I would like to
8 hear it; but I haven't heard one yet.

9 MS. JAMISON: Mr. Chairman, my two cents on
10 this is it hardly seems like the kind of issue that needs
11 to be addressed through legislation. It seems to me more
12 administrative detail type of ...

13 MR. SMITH: May I comment on that? It's
14 really not administrative detail. It is in rule. So we
15 either have to change it in rule, I guess, and go through
16 the whole process of changing a rule or changing it in
17 legislation. I mean, it is not a just a policy or a wave
18 of the pen. I believe it's in rule; is it not?

19 MR. GILL: Yes.

20 MR. BINGHAM: It's in rule.

21 MS. JAMISON: Can we ask Ian to comment?

22 MR. BINGHAM: It is a rule requirement. And
23 the intent of the rule requirement is, obviously, to aid
24 in the review of a work plan. Work plans were based on
25 information that has been obtained while doing site

1 investigation or just any kind of research. And the idea
2 was to give the Department a document that would allow it
3 to understand what the preparer understood at the time
4 they prepared that work plan.

5 To simply assume that they are to go to the
6 file -- And some of these LUST files can be anywhere from
7 just a few inches to feet. And for the Department staff
8 to go through all that to get the understanding that the
9 preparer had in writing this work plan and then seeing
10 prospectively what they plan on doing in the future was a
11 monumental task.

12 And on the back end, it also created problems as
13 work plans tend to take time to implement staff changes.
14 For now a direct-pay application to come in and somebody
15 to understand does it meet what this work plan was saying,
16 if you don't understand what the work plan was intended to
17 do to begin with, you cannot make that decision.

18 And the language here, the concept -- if you are
19 asking if I have a problem with the concept, I do not.
20 Whether the language actually gets us to where it is or
21 where we need to be, that's something we probably need to
22 discuss. But I don't believe anybody with any logic would
23 want something more cumbersome external or internal.

24 CHAIRMAN O'HARA: Thank you, Ian.

25 Mr. Beck.

1 MR. BECK: Brian Beck, part of the regulated
2 community. The whole issue that we are trying to avoid
3 and just about every consultant and RP out there, the
4 Department is requiring us to resubmit total reports that
5 were previously done, so instead of having a work plan
6 that may consist of a single one-inch volume where it is
7 summarized to submitting four or five volumes just
8 duplicating all previous reports. It is just needless
9 when a summary within the report itself could satisfy.

10 CHAIRMAN O'HARA: The rule requires that?

11 MR. BECK: That's what the Department has
12 taken as the interpretation.

13 CHAIRMAN O'HARA: Okay.

14 MR. BINGHAM: On work ...

15 CHAIRMAN O'HARA: Any more discussion on
16 Concept 2?

17 MR. SMITH: I think Roger.

18 CHAIRMAN O'HARA: Roger.

19 MR. BEAL: Yeah. I guess I'm sensing I
20 would like a little more input. I see Ian wanting to say
21 something and not. But if we have legislation going to a
22 common problem, it burdens the process of getting the work
23 done. Are we creating more than we're solving? And I'm
24 sure that all of the consultants out there, it is a very
25 real issue that needs to be addressed. But I'm not

1 absolutely positive that legislation is the way to do it,
2 although the legislation that is here I don't have a
3 problem with.

4 But it seems like the type of thing that this
5 Commission should be addressing at other times are these
6 types of issues, not reviewing the legislation that
7 somebody has come up with to resolve a problem that may
8 not, in fact, exist other than by policies and procedures.
9 So I'm not sure we know. Is this in rule that it has to
10 be? I'll ask directly. Or is this just the way it's
11 being done?

12 MR. SMITH: It is in the rule.

13 MR. BINGHAM: I'm not sure to the point that
14 Mr. Beck was making the examples -- And this is not the
15 format -- I'm not coming here to argue anymore. If people
16 have issues with interpretations -- Mr. Beck has never
17 called me and said, Ian, here is a situation. Here's
18 what's going on. Is this -- Why is it? What's going on?

19 And I'm not -- I will not have that discussion
20 in this format either. I don't think it's appropriate.
21 And I'm not saying things -- mistakes have not happened,
22 misinterpretation of language, poorly written letters.
23 I'm not saying these are not all legitimate issues.

24 CHAIRMAN O'HARA: That's not the issue here.

25 MR. BINGHAM: And that's why I refrained

1 because this is not the place to have that discussion.

2 MR. BEAL: Thank you.

3 MR. SMITH: Roger, maybe I can answer your
4 question. And, Ian, correct me if I'm wrong. It is in
5 rule, and rule is law that those items need to be
6 submitted under the work plan. Is that correct?

7 MR. BINGHAM: There is a law requiring that
8 information, yes.

9 MR. SMITH: Right. And maybe as a
10 follow-up, not going the legislative route, what is the
11 procedure to change a rule?

12 MR. BINGHAM: Well, the SAF rule packages --
13 I think it is a later agenda item, but that is the vehicle
14 of mechanism to modify the SAF rules.

15 MR. SMITH: So essentially to modify rules,
16 you go through the rule-making process and eventually to
17 GRRC.

18 MR. BINGHAM: Right.

19 MR. SMITH: Which takes approximately a year
20 or so to go through.

21 MR. BINGHAM: Depends on the public comment
22 period.

23 MR. SMITH: Right. Thank you.

24 MR. PEARCE: It depends on a lot more than
25 that. In fairness, it depends on when the rule is ready.

1 Speaking to the issue -- I don't want to speak out of
2 turn, but if I may wrap this up. We have been waiting for
3 SAF rules --

4 MS. WOODALL: Excuse me. I really
5 apologize, Mr. Pearce.

6 MR. PEARCE: I'm sorry, Laurie. I'll raise
7 my hand.

8 MS. WOODALL: No. We really need to stay
9 focused, I think, on the legislation because that was what
10 we were talking about unless you want to open the floor up
11 for something else. I'm concerned about the open meeting
12 law issues. And since I have been designated to pop up --

13 CHAIRMAN O'HARA: You think we are straying
14 too far?

15 MS. WOODALL: I think maybe it is straying.
16 And I apologize, Mr. Pearce. I didn't mean to
17 cut you off.

18 MR. PEARCE: I didn't mean to stray. I'm
19 not straying.

20 CHAIRMAN O'HARA: Is it on the issue of
21 legislation?

22 MR. PEARCE: It is dead on the issue.

23 MS. WOODALL: Okay.

24 MR. PEARCE: It is as simple as this: We
25 can continue to wait for a State Assurance Fund rule

1 rewrite, which we have been waiting for for quite some
2 time. The rules have not been written for years. I don't
3 know when we are going to find a rule rewrite that will
4 accomplish the goal of this particular piece of the
5 legislation, which is to avoid duplicative submittals on
6 this issue.

7 I have been involved in a number of wasteful
8 appeals where the sole issue has been the rejection of a
9 work plan because the work plan does not contain
10 information that's already been submitted. That's what we
11 are trying to accomplish in this piece of legislation.

12 Why legislation? Because legislation is the
13 fastest way to accomplish this goal and hopefully minimize
14 the appeals that spring from it. Is it in rule? You bet
15 it's in rule. It was in rule that was drafted at the time
16 the approval process was first implemented, and it has
17 unintended consequences that have not been applied until
18 recently. One of them is the resubmission of information
19 that's already been submitted. That's why it is coming up
20 now.

21 CHAIRMAN O'HARA: Any other comments on
22 Concept 2?

23 Let's address Concept 3. I've just got a quick
24 question maybe for Mr. Pearce because he described it.
25 Basically takes out the cost effectiveness portions of

1 49-1005?

2 MR. PEARCE: If I may take -- Yes, John
3 Pearce again. That is what it does. It does not, in
4 response to Mr. Jones' letter, remove the concept of
5 addressing reasonable and necessary and cost effective
6 analysis from the overall process. That is a process set
7 forth in great detail elsewhere in the Underground Storage
8 Tank Act as well as in the rules that accompany the act,
9 specifically in 49-1051, et seq.

10 That is where the reasonable and necessary and
11 the whole cost paradigm comes into play under the
12 Underground Storage Tank Act. A number of years ago, some
13 of these cost-related concepts snuck into 49-1005, the
14 corrective action of the Underground Storage Tank Act,
15 because there was concerns that the owner-operators would
16 not otherwise be aware that their work is going to be
17 judged based on the cost effectiveness and the process.
18 So it was deemed desirable by certain members of the
19 legislature to put language in 49-1005 to provide a
20 tip-off that, hey, you are going to be judged on what you
21 submit under cost effectiveness so you better submit a
22 technical approach that's cost effective.

23 That was the intent of legislation. That was
24 the intent of Mr. Bowers who wrote this language. The
25 language came from WQARF and was imported into the

1 Underground Storage Tank Act for that purpose. And until
2 recently, that language in 49-1005(d)(3) has not been
3 applied to review and analyze technical alternatives to
4 the degree it has been analyzed lately.

5 And my problem and the problem the regulated
6 community is experiencing on this is the degree to which
7 the owner-operator must submit cost information --
8 detailed cost information to the point of submitting bids,
9 bids, from contractors on each and every one of the three,
10 minimal three, different corrective action alternatives
11 have to be presented to the Department for its review.
12 Even though it is clear to everybody -- and ultimately it
13 is resolved this way -- one of the approaches is going to
14 be the preferred approach. Sometimes it may be two
15 different competing approaches. Why does an
16 owner-operator have to submit bids on each of the three
17 different processes when only one of them is going to be
18 the process of choice?

19 Now, this doesn't mean that the cost
20 effectiveness, the reasonable and necessary approach,
21 isn't going to be conducted at some point in the process
22 after the technical approach is approved. We are not
23 trying to divest the Department of that prerogative, of
24 that mission to protect the fund. It is just the timing
25 of that review that we're after and trying to minimize the

1 duplicity of that cost-related review.

2 CHAIRMAN O'HARA: Let me ask a question by
3 way of example. If this legislation goes through -- or
4 this concept goes through as you've written it and
5 somebody submits a pre-approval work plan that has some
6 outrageous type of cleanup method that's going to cost two
7 times more than a cost effective method would cost, is the
8 Department able to -- and how would the Department --
9 Maybe Ian can answer it. Would they be able to look at
10 that and determine it is unreasonable, it is excessive,
11 therefore, deny the work plan without this part of
12 49-1005?

13 MR. PEARCE: Of course. The Department
14 would select a technical approach that makes sense under
15 the circumstances. And if the Department feels that it
16 cannot conduct that kind of review if we strip the
17 language out of 49-1005, then I don't know how the
18 Department has ever before selected approaches for
19 corrective action without considering the desensibility of
20 that particular approach because somehow they did it
21 before this language was added a couple of years ago.
22 Three years ago to be exact.

23 So I don't see how the Department can say, Hey,
24 we can't function if this language isn't in 49-1005(d)(3)
25 because it functioned just fine selecting the appropriate

1 approach before that time.

2 Again, if there is some need for language that
3 says the Department is by no means divested of the right
4 to conduct this kind of cost-related review, the cost
5 aspect of it, great. What we are looking for in -- and
6 this is where we need the Department's assistance -- is
7 something that says we don't need to pick out each and
8 every one of these technical approaches on the front end
9 to the point where people have to submit this burdensome
10 information to support each and every one of the three
11 different alternatives that have to be promoted. We are
12 just trying to minimize the effort level in getting the
13 information to the Department and the Department's effort
14 level when reviewing it.

15 Elijah.

16 MR. CARDON: Mr. Chairman, I really have
17 appreciated the review by the members of the public so far
18 on these particular issues. And my comment is certainly
19 not to interrupt or to infringe on that.

20 I would like to make the observation that
21 it's -- I don't understand how we as a Commission can
22 support specific language in any specific legislation
23 because of the changing nature of it and because we don't
24 control the formulation of it. However, I would very much
25 appreciate us being able to reduce the questions that are

1 being addressed in the legislation to concepts or ideas
2 that we as a Commission can either support or reject.

3 And my question would be then: How would be the
4 best way for us as a Commission to do that with respect to
5 the very things that are being brought before us today?

6 CHAIRMAN O'HARA: I think that's the
7 approach we are taking, is to study the concepts, discuss
8 the concepts, and then maybe individually or in total,
9 probably individually, vote as a committee to recommend to
10 the legislature that we approve these concepts or
11 disapprove them.

12 MR. CARDON: So I'm not prepared to make a
13 motion. I think it is premature, but I would certainly
14 recommend that we attempt to encapsulate the concepts that
15 are presented to us that we might be able to address them
16 as a committee.

17 CHAIRMAN O'HARA: Sure. I think that's the
18 approach we are taking.

19 Nancy, do you have a comment?

20 MS. JAMISON: Just one more comment on what
21 Mr. Pearce just talked about. I've not been shown
22 specifically how or what language in the statute would
23 allow DEQ to continue to make these evaluations if this
24 language is removed from 49-1005. As a matter of
25 statutory interpretation, you look at what the legislature

1 adds and what the legislature takes out. And you assume
2 that there is purpose in each of those actions.

3 And if the legislature is taking out of the
4 statute, which is a part of the fundamental program,
5 authorization language referring to corrective action
6 being cost effective, then you assume that the legislature
7 doesn't care about those actions being cost effective or
8 that the legislature doesn't want them to be cost
9 effective, which is seemingly inconsistent with the
10 directive to be fiscally responsible in operating the
11 public -- the process. So it appears to me that this
12 would make DEQ's job more difficult, that there is kind of
13 a sledgehammer approach here where we need a scaffold.

14 CHAIRMAN O'HARA: The concept that I'm
15 hearing, and I also picked it up from the letters from
16 stakeholders, I don't think anybody is in favor of taking
17 out the concept of cost effectiveness. And even, I think,
18 John was mentioning that the language will somehow include
19 that. The idea is to make it more simple, to alleviate
20 some of the burdens that are required by that language to
21 submit bids and so forth.

22 Am I accurately encapsulating that, John?

23 So the concept, I think, is not to remove cost
24 effectiveness, as I understand it. I wouldn't be in favor
25 of that either.

1 MS. JAMISON: That's what it does.

2 MR. SMITH: Mike, maybe the compromise for
3 this and maybe for people who are not totally
4 understanding, that we're not wanting to completely strip
5 this out of the overall review of corrective actions. And
6 maybe the compromise is to take the section that we are
7 talking about, 1005(d), and insert it in a more
8 appropriate place. And maybe that's the possibility that
9 we look at doing rather than just saying we are stripping
10 it out of the bill and we are not going to do it. Maybe
11 we put it in a more appropriate place but still include
12 that language.

13 CHAIRMAN O'HARA: You are talking about --

14 MR. SMITH: I haven't talked about it.

15 CHAIRMAN O'HARA: You are talking about
16 language in bills.

17 MR. SMITH: Right.

18 CHAIRMAN O'HARA: My understanding is we are
19 not going to get into it.

20 MR. SMITH: No, we're not. I think it is --
21 the concept of we are taking it out and it is not going to
22 be there, I think, is not right. I think to reinforce
23 that, make the concept be that it is going to be the same
24 language elsewhere.

25 CHAIRMAN O'HARA: We want -- Okay, got you.

1 Ian.

2 MR. BINGHAM: Couple comments. I don't know
3 if I can completely agree with the characterization
4 Mr. Pearce made earlier regarding the Department's ability
5 on the back end. I'm also concerned if we just focus on
6 1005(d)(3) alone, there is also another change in 1052(o)
7 that is very much intertwined with what's going on in
8 1005(d)(3).

9 The first sentence of (o) has been struck, which
10 talks about the requirement for the corrective action
11 being the most cost effective alternative proposed in a
12 corrective action plan leaving just a remainder of (o),
13 which the last sentence deals with if you didn't choose
14 the most inexpensive method. So I cannot agree with that
15 process.

16 Also, when you get into the whole corrective
17 action plan itself, you still need to go with the federal
18 law which puts a burden on an owner-operator, a federal
19 law, to implement a corrective action plan as approved by
20 the implementing agency, which in the state of Arizona is
21 ADEQ.

22 We must also read 49-1054(c) that has a
23 provision in there that explicitly states, "Anything that
24 is at the written instruction of the Department is
25 reasonable, necessary, and reimbursable under the State

1 Assurance Fund." So to then say, putting all of this
2 together, that on the back end the Department still has
3 the ability to make a determination whether or not the
4 chosen technology is the most cost effective for that site
5 I don't believe is a clear and accurate characterization.

6 If you want to know what Ian Bingham's personal
7 opinion is, there you go.

8 MR. DENBY: I guess I have a question,
9 probably more of an open-ended question. We're talking
10 about cost effectiveness here, and it seems the community
11 was talking about cost effectiveness. But, yet, we are
12 taking about "reasonable" and "necessary" and "cost
13 effective," all three of those words. "Necessary" I think
14 is superfluous in the language of the statute anyway. If
15 you're doing a corrective action, obviously, it is
16 necessary.

17 But "reasonable" struck me as sort of
18 interesting, why that is gone as well as "cost effective."
19 And my understanding of -- I'm trying to remember three
20 years ago. I probably can't. I think "reasonable and
21 necessary" was always sort of the genre that corrective
22 actions worked in, and then "cost effective" was added in
23 as a later amendment.

24 So in my mind, the question of reasonableness
25 may come down to the question of whether it is the

1 Cadillac versus the Yugo that you are trying to use to
2 clean up the site. And that's sort of the reasonableness
3 standard. They added "cost effectiveness" to try and
4 redefine what they meant by the various standards you
5 could use.

6 So, I mean, part of my concern is that the
7 Department has a position -- or needs to have a position
8 that is twofold. One is if you are going to go out and
9 just do this work on your own site and you are not going
10 to come to the SAF for any money, we don't care what you
11 use as long as it meets the thresholds of environmental
12 protection and gets the job done. If you want to put the
13 Ferrari on your site to get it done and you are paying
14 your own bill, that's fine.

15 But the problem I'm concerned about is that if
16 you do get to that stage and then turn around and decide
17 you want SAF coverage, you still have the right for SAF
18 coverage. And suddenly you then began to run afoul, I
19 think as Ian was just mentioning -- I was just looking at
20 these things, 1052 and 1054.

21 When you are in the State Assurance Fund, at the
22 same time that corrective action stuff was put through
23 several years ago, there were changes made to 1052 and
24 1054 that allowed processes that are approved by the
25 Department to move through more fluidly. And I have not

1 researched it in detail. But it leaves me a little
2 concerned listening to Ian and some of the letters that
3 come through about whether there is a missing link there.

4 And if you do take away this language in the
5 front of corrective actions, are you going to allow
6 somebody to come in and pretend they are doing a Cadillac
7 on the front with no SAF coverage and then turn around and
8 pursuant to their rights under the fund, six months later
9 come in and say, You know what? We want coverage for this
10 Cadillac.

11 And I'm not sure that the 1052 and 1054 are
12 going to be able to stop there. And if there is a change
13 to 1005(d), whatever, (3), that needs to be done, I think
14 there needs to be some discussion as to what the effects
15 back on the SAF side of it are going to be.

16 CHAIRMAN O'HARA: Any other comments?

17 MR. PEARCE: If I can just wrap up --

18 CHAIRMAN O'HARA: Quickly, yeah.

19 MR. PEARCE: -- some of the stakeholders'
20 thoughts on this issue? The scalpel is what is desired,
21 not the sledgehammer. There is no interest in changing
22 cost review and selection of a reasonable and necessary
23 technical alternative in lieu of something that's a waste
24 of money, digging to China.

25 The goal here on this particular aspect of this

1 bill is to, again, minimize to the extent possible the
2 degree of hyperanalysis that goes into reviewing the
3 technical alternatives on a cost basis so the Department
4 does not have to satisfy itself that every component of
5 the technical aspect that's being proposed is going to
6 price out at a certain dollar so they can make a
7 100 percent definitive evaluation of exactly how much it's
8 going to cost for that technical alternative vis-a-vis
9 another one at the time of the selection of the technical
10 alternative is made with the assurance that the pricing of
11 every component of the technical alternative will be
12 reviewed under reasonable and necessary standards when the
13 claims are submitted for that work.

14 And if that is a concept that is not workable in
15 statute, then maybe we flush it. If that's a concept that
16 can be made in statute so that we don't see as many
17 denials on what I just described -- and there have been
18 many -- then we're generating appeals and we're wasting
19 time. Then I give up. But if there is a way to get this
20 language so we meet that goal, let's try and do it.

21 MR. DENBY: In follow-up to that, looking at
22 this -- the thing that stands out to me is if you've got
23 the alternatives under (d) to look at for the Department
24 to make a choice between their three bids, or whatever
25 they are, that come in, if technically feasible is the

1 only option the Department has to look at to review the
2 three that come in, there's no -- I mean, presumably they
3 are all going to be technically feasible. You are not
4 going to say, Go out there and dig with a toy shovel. So
5 they all would be technically feasible.

6 The question then becomes: How does the
7 Department make a decision on which one do you use? And I
8 don't know the process well enough to know how to even
9 make this decision now. But that would be a question for
10 me, would be how can the Department make a decision if
11 they are all three technically feasible and they all three
12 meet the only requirement left, which is technically
13 feasible?

14 The other thing that you mentioned, I mean, if
15 this is a question of the Department requesting too much
16 information up-front from these people and requiring
17 detailed bids at the get-go when they are trying to
18 determine which of these three technologies will work, I
19 mean -- looking at Ian, but -- I think the director of
20 weights is in here as well. I think there would be a
21 better route to getting it done maybe on this, which would
22 be --

23 MR. BINGHAM: I'll take it.

24 MR. DENBY: -- simply some sort of a policy
25 or some understanding that this is what we want and this

1 is what's reasonable under the statutes versus we're
2 requesting too much information and injuring stakeholders
3 trying to come to the fund.

4 MR. BINGHAM: This very issue was discussed
5 at great length during the development of the guidance
6 development. And it was actually a revelation, if you
7 will, to me of how great apart we were on just the
8 understanding and really also emphasized how poor the
9 communication has been regarding this very issue.

10 And my understanding at that time and when this
11 came up again, it was really kind of like slapping me in
12 the face, if you will. I thought we resolved this thing
13 during the guidance document development. We had a table
14 that we asked for just some general ideas for your
15 technology. Give us -- and the key word here is an
16 estimation of your technologies of what your costs would
17 be in some very general areas: Set-up, initial
18 installation costs, O&M. Here are your methodologies.
19 What do you anticipate based on your experience it would
20 cost because the Department -- even before I joined the
21 section, that's how I always understood that aspect.

22 It became clear to me that -- And I commend the
23 stakeholders. They showed me letters and pointed me to
24 files, and I read some of these letters that clearly gave
25 an indication. And I saw what they read and understood

1 their point, that it gave the appearance we are looking
2 for SAF work plan-type detailed breakout for the CAPs.

3 And there was a huge gap between what we were
4 asking for and what the perception was on the external
5 part. I thought after several hours of discussion we
6 closed it and we resolved it. Again, I'm not quite sure
7 why this is still coming up because we reached consensus
8 on that portion of the guidance document a while back.

9 CHAIRMAN O'HARA: Elijah.

10 MR. CARDON: Mr. Chairman, I have been
11 following Ian's comments closely; and I think I've
12 understood what he's said. And thank you for that
13 clarification.

14 If I could just paraphrase in a brief fashion
15 what I think Ian said, that he had understood that
16 detailed bidding to subcontractors of several different
17 options on a proposal was not necessary, that it was his
18 understanding that cost estimations of different options
19 would be helpful to the Department. This is the very kind
20 of thing that I think the Commission could take action on
21 and perhaps to the benefit of all concerned.

22 And I would like to propose that we encapsulate
23 this particular concept into a motion and whether that
24 would be appropriate for today or whether we would have to
25 notice it for our next meeting but simply say that we, in

1 essence, support the consultants giving the reasonable
2 alternatives and making a proposal for the selection of
3 their alternative of choice and any other additional types
4 or thoughts that any member of the Commission may like to
5 include in that type of motion.

6 It would seem to me that this is the very
7 essence of what this Commission may do, and I would really
8 like to hear from other members of the Commission that
9 this is right now the time to get to the question.

10 CHAIRMAN O'HARA: I'm open to any
11 suggestion, Elijah.

12 I was going to suggest to throw it out there.
13 We are not going -- The issue is legislation. And to vote
14 on -- we talked about voting on the concepts of the
15 legislation, not the language of the legislation. I think
16 we are still within our agenda.

17 I was going to suggest, it seems to me obvious
18 if you were to really summarize some of the issues that
19 are coming out, it seems like everyone is in support of
20 the provisions of this bill, which are alleviating some of
21 the burdens on both the Department and the consultants and
22 submitting pre-approval work plans and getting costs
23 reimbursed. I don't think there is agreement -- or it is
24 also a consensus that we don't want to eliminate the cost
25 effectiveness of the State Assurance Fund's review of

1 those pre-approval work plans. That's a very high-level
2 summary of the bill.

3 I was going to suggest we make some kind of vote
4 to the effect we agree with the provisions that will
5 alleviate the administrative burden, and we also are in
6 favor of the Department maintaining the cost effectiveness
7 review, something to that effect. I'm open to
8 suggestions.

9 MR. GILL: Mike.

10 CHAIRMAN O'HARA: Go ahead, Hal.

11 MR. GILL: I just would like to give my
12 opinion of what this whole legislation is about in this
13 particular section we are talking about, is that in the
14 umpteen years I have been doing this in Arizona, probably
15 for the last five, six at least, I could probably count on
16 one hand a technical review that I have seen of any report
17 we've sent in for work plans.

18 The DEQ is not doing a technical review. They
19 are looking at the costs only every time. I want to see a
20 technical review of our reports. Is this appropriate what
21 we are doing, not is the cost for this item, for this
22 issue, for this technology inappropriate compared to
23 others. I want to see if it's technical.

24 Let's have the cost discussion in the cost area
25 where it belongs because we need a technical review of our

1 reports, of our applications, of our work plans. I can't
2 even think of the last time I have seen a technical
3 comment on a deficiency letter. That was my question over
4 and over again when I -- early on when I responded to,
5 well, where's the technical deficiency? I mean, this is
6 not a technical deficiency that you are talking about.
7 Work plans -- that's actually what it says in rule, that
8 you are supposed to provide a technical review.

9 And my comment early on was this is not a
10 technical review, this is not a technical issue. That's
11 what I want to see. I don't want to see -- I agree it has
12 to be reasonable and necessary and cost effective as a
13 technology or as a concept of what you are wanting to do
14 on the site. If you have a site that has contamination to
15 30, 40, 50, 60 feet and you go in there and dig this up
16 and you know full well in Arizona VE works great on a
17 site, or air sparge VE, that is not technically feasible
18 and it would not be cost effective. That's the kind of
19 cost effective review I want to see done on the technical
20 side of the program.

21 Look at the issues as a technical issue and see
22 whether that is cost effective for the process that you
23 are trying to do, the remediation or characterization. It
24 isn't just a CAP issue. It is in work plans for site
25 characterization where they're denying contingencies and

1 no technical basis for why they are denying. There is no
2 technical basis for the comments they are making. They
3 are all cost related.

4 Once you have approved my technical or any other
5 consultant's technical plan that they are submitting for
6 approval, then -- and if it isn't completely out of range
7 of feasibility as far as what you know it's generally
8 going to cost, then let it go onto the next phase and let
9 whatever group look at it as far as the cost issue.

10 MR. BINGHAM: May I ask a question? If the
11 CAP comes in and the proposed technology calls for
12 removing water from an aquifer and discharging it into a
13 city's sewer system and we raise an issue as to the
14 feasibility and whether or not the city's sewer system is
15 capable of handling the volume of water you will be
16 removing and putting in it, would you consider that a
17 technical decision? I'm referring to one of your sites,
18 by the way.

19 Would you consider that a technical -- because
20 I'm going to take exception to a statement that my staff
21 does not make technical decisions.

22 MR. PEARCE: Ian, we are not supposed to
23 talk about specific sites.

24 MR. DENBY: The chairman stepped out, so I
25 will step up. I think that may go a little beyond where

1 we need to be. I do appreciate the fact that we need to
2 be free to respond to personal criticisms, and I can
3 understand that Ian considers that a personal criticism of
4 his department or his section. I don't think -- that's
5 certainly on the record -- for the record.

6 The question I would have, Hal, I guess I'm
7 somewhat confused. It sounds like you said they're only
8 making cost determinations and not technical
9 determinations; but yet, you said that they need to be
10 making a decision at the time whether you dig to China or
11 whether you use air sparge, or whatever words you are
12 talking about, because there is a financial decision --
13 distinction between those. It sounds to me like you are
14 saying there needs to be a financial determination made at
15 the time they decide between the three preferred options
16 or whatever those three options are that are tossed out.

17 MR. GILL: I think the issue when we get
18 into -- that's why we did have this discussion for a long
19 time in the guidance document. In Arizona, this is not a
20 real difficult issue because we have been doing this for a
21 long time. We know what it takes to clean up sites. We
22 know the technologies that work. And DEQ as well as the
23 consultants have been looking at these reports and looking
24 at the costs for many years now. And if they see an
25 application that comes in for 60 foot of soil

1 contamination that they want to dig this up and they know
2 from looking at umpteen work plans for VE of a particular
3 site, that the costs they are talking about and the
4 technology itself just does not make sense based on what
5 we have seen in the past, they can make a decision as to
6 whether that's technically feasible and cost effective
7 when they know that VE would clean this up in six months
8 or a year.

9 Digging this up is going to take a lot of time,
10 a lot of money, a lot of potential danger and everything
11 else. That's what I'm talking about. To me that's the
12 kind of decision that should be made in a CAP, corrective
13 action plan, where you are proposing technologies. I
14 think the issue as far as going into detail on some of the
15 costs in the corrective action plan when it hasn't even --
16 when a technology hasn't even been approved yet by DEQ
17 doesn't make sense to spend time and money. That's what
18 the issue was before on those issues.

19 MR. DENBY: If I can paraphrase what you are
20 saying, it sounds like you don't have a problem with
21 having cost effectiveness or reasonableness or something
22 like that as part of the initial corrective action review
23 that the Department does. But you're concerned, as
24 Mr. Pearce acknowledged, that the detail of what they are
25 asking for is too much.

1 MR. GILL: Exactly. It is over and over
2 again, the detail they are looking for on a particular --
3 it isn't just on CAPs. That's an easy one to bring up.

4 MR. DENBY: It is not necessarily an all or
5 nothing that we strike (d) or we don't strike (d). It is
6 more a question of what is the level of the Department's
7 review.

8 MR. GILL: Unfortunately -- Well, go ahead
9 and get comment from the ...

10 CHAIRMAN O'HARA: First I will go to Elijah,
11 and then I'll come right to you.

12 MR. CARDON: You know, this is just
13 fascinating. I'm feeling good about this meeting today,
14 perhaps better than other meetings in the past --

15 MR. BINGHAM: I am glad somebody is.

16 MR. CARDON: -- of the open exchange of
17 ideas. And there, perhaps, has been now, yet, another
18 additional idea placed upon the table -- it certainly
19 bears on what we have been discussing, but placed upon the
20 table by Commission Member Hal. And that is we could,
21 perhaps, as a Commission encapsulate once again and take a
22 position on whether or not there should be a free and open
23 communication on technical decisions and technical aspects
24 of applications. And there probably wouldn't be a person
25 in the room that wouldn't support that.

1 CHAIRMAN O'HARA: Maybe Laurie would because
2 it is not on the agenda or is it?

3 MS. WOODALL: Well, I have been listening.
4 And it seems to me that a lot of your discussion has
5 related to the legislation and the reasons for why the
6 legislation that has been proposed has been proposed and
7 the response of the Department and members of the
8 Commission to it.

9 And I do note that in the statute that empowers
10 the Commission to act you do have the authority to, quote,
11 transmit specific recommendations for improving the
12 program to the director, the speaker of the House of
13 Representatives, the president of the Senate, and the
14 Governor. And so, therefore, to the extent today that
15 you're thinking about making a vote, if it was your desire
16 to authorize the chairman to memorialize the conclusions
17 of the Commission in some correspondence that could be
18 directed to all of those entities, you would certainly be
19 acting in conformity with your statutory authority. But
20 that would relate only to the legislation and the items
21 that are on the agenda today.

22 There may be other issues that you determine are
23 recommendations for improvement that are not on today's
24 agenda. You may want to have another agenda item for a
25 future meeting and solicit specific recommendations that

1 the Commission could consider, then take a position on,
2 and then memorialize its position in some written
3 correspondence. That's something that you could do, if
4 you wanted to.

5 CHAIRMAN O'HARA: Great. Thank you.

6 I am going to take some comments from the
7 public. Then maybe we can work on a motion, if that's so
8 desired, from the Commission members.

9 Mr. Kelley.

10 MR. KELLEY: Dan Kelley, member of the
11 regulated community and preparer of corrective action
12 plans and work plans. One of the big issues I'm seeing in
13 this discussion is we're only focusing on one half of the
14 49-1005(d)(3) problem. I'll address that one -- the first
15 half that we were talking about real quick and then
16 present the second half that we haven't discussed.

17 Using Mr. Denby's analogy of the Yugo versus the
18 Cadillac, the most recent version of the amendment that
19 passed out of the NRAE last Friday within (d)(3) only
20 struck the word "cost effective." So we still have
21 "reasonable" and "necessary" and "technically feasible."

22 MR. BINGHAM: Excuse me. Is that true?
23 Then the Department nor anybody else has seen it. This
24 being the last one just inserts "technically feasible"
25 back, the last three copies I've gotten.

1 MR. KELLEY: Okay. I'm sorry. It inserts
2 "technically feasible," okay? So (d)(3) still has the
3 standard of technically feasible. Is this technically
4 feasible, does the Yugo or the Cadillac still fit this
5 from a technically feasible standpoint?

6 That language does not strike -- that amendment
7 does not strike the language in 1054(c) which states that
8 the Department shall pay eligible costs that are
9 reasonable or actually incurred. Reasonableness of
10 corrective actions shall be determined based on the law
11 and the facts available to the owner-operator at the time
12 technical decisions are made. So "reasonable" and
13 "necessary" is still applied to the reimbursement of SAF
14 expenses.

15 Mr. Denby's consideration concerned, which is
16 legitimate, that if I'm going to go ahead and undertake
17 corrective actions on my own without Department approval
18 and I put a Cadillac out there to do when the Yugo would
19 have done it, when my claim comes in, the Department is
20 only paying for the Yugo. They are still bound to pay for
21 the reasonable technically effective remediation.

22 MR. BINGHAM: That is correct. Do you mind
23 if I -- That is correct. But when you put the burden in a
24 CAP and nothing stops an owner-operator from submitting a
25 CAP at any point in time during the entire corrective

1 action process and the Department approves the CAP and
2 federal law requires the owner-operator to implement the
3 CAP as approved, there is another sentence in that very
4 paragraph you just read that says, and I'll paraphrase it
5 because some of it deals with pre-approval, at the written
6 instructions of the Department is reasonable, necessary,
7 and reimbursable.

8 MR. KELLEY: I can follow on Ian's point,
9 Mr. Chairman. This is what Hal is bringing up. Why would
10 you -- why would the Department give that written approval
11 of something that doesn't meet that technically feasible,
12 reasonable standard? And your point is very valid,
13 Mr. Denby, that the word "cost effective" was added to
14 that to try to flush out what is reasonable, okay?

15 So now I am going to use that point that we
16 stuck "cost effective" on there to try to flush out what's
17 reasonable. And to Mr. Gill's point, that that's now the
18 only thing we look at -- that the Department is looking
19 at, is this cost effective, is this the most cost
20 effective in going through this cumbersome exercise to
21 determine cost effectiveness because it doesn't need to
22 apply at that stage of the game.

23 Tell me from your professional experience,
24 Department, who regulates these sites for the last 15
25 years, is this technically feasible? Is this reasonable?

1 Cost effectiveness being a component of their
2 consideration, absolutely, but the absolute standards you
3 are going to be held to when you go for reimbursement. So
4 if they are giving that corrective action plan approval,
5 they should be taking that into consideration, Number one.

6 MR. BINGHAM: How?

7 MR. KELLEY: Number two, how were you giving
8 those corrective action plan approvals before the word
9 "cost effective" was stuck in? Are we saying the
10 Department just never paid attention to cost effectiveness
11 before those words were stuck in there?

12 MR. DENBY: I guess my concern -- or my
13 comment would be that that's where the "reasonable" and
14 "necessary" used to be and now you have taken out
15 "reasonable," "necessary," and "cost effective" meaning,
16 as you just said, that the Department needs to look at it
17 on the front end. Well, they can't if it is --
18 technically feasible is their only threshold for telling
19 you yes or no. The Yugo and Cadillac are both going to
20 move you down the road. It is a matter of -- And then you
21 look backwards and you say under 1054(c), you are quoting
22 here the sentence Ian is talking about.

23 If it is already deemed reasonable and necessary
24 and reimbursable and it is the Cadillac because you took
25 away the ability for the Department to say no, the Yugo

1 will get you there just as well, the SAF looks like
2 they're hamstrung unless there is a way to tell them they
3 are not hamstrung to come back and, You know what, you did
4 the Cadillac and we don't think that's necessary --

5 MR. KELLEY: I hear what you are saying.

6 MR. DENBY: -- or reasonable.

7 MR. KELLEY: Perhaps I could support
8 reinsertion of the word "reasonable" because reasonable
9 and technically feasible should get Mr. Hal's concerns
10 satisfied, it should get Mr. Bingham's concerns, should
11 get yours. Don't you agree that it is reasonable and
12 technically feasible -- the Yugo and Cadillac is
13 technically feasible? One of them is reasonable.

14 MS. WOODALL: Mr. Chairman, I apologize. I
15 know it is customary for the court reporter to have a
16 break about every hour.

17 CHAIRMAN O'HARA: I know. I am ready to go.
18 I was trying to get this part wrapped up so we kind of get
19 to a break. It doesn't look like it's going to happen.

20 MR. KELLEY: We are going to lose a lot of
21 continuity if we stop right here. So I can understand
22 inserting the word "reasonable" for what we are talking
23 about, CAP approvals and that sort of thing.

24 There is another side of (d)(3) that has not
25 even been mentioned here. It is the Department's

1 application of 49-1005(d)(3) to reimburse expenses. And
2 we have in hand here a denial that came out of the
3 Department within the past week where the Department is
4 applying the (d)(3) --

5 MS. NOWACK: That's not --

6 MR. KELLEY: I am not bringing up site
7 specific. I can bring up multiple sites. I just happen
8 to have one in hand.

9 MS. JAMISON: The sites are still site
10 specific. Excuse me. But multiple sites -- bringing up
11 multiple sites, you are still bringing up site specific.

12 MR. DENBY: Don't tell me what the site is,
13 just mention to me. I am curious how they're --

14 MR. KELLEY: I am not mentioning the site.
15 The point is the Department is applying reasonable,
16 necessary, cost effective, technically feasible, denying
17 mileage based on that expense. Now, how is mileage
18 traveling to a site not reasonable, not necessary, and not
19 technically feasible? The only language that they are
20 dragging in is the cost effective. There is a cost
21 ceiling in the schedule that says you get paid this much,
22 no more.

23 MR. DENBY: That's a denial under
24 1005(d)(3).

25 MS. JAMISON: Again, Mr. Chairman. We

1 just -- we cannot talk about --

2 CHAIRMAN O'HARA: It sounds like an appeal
3 issue almost.

4 MS. JAMISON: -- site specific issues.

5 CHAIRMAN O'HARA: We are not here to argue.

6 MR. KELLEY: I disagree. We are not saying
7 site specific.

8 MS. WOODALL: Folks, the court reporter can
9 only take down one person.

10 CHAIRMAN O'HARA: Does it deal with this
11 legislation?

12 MR. KELLEY: I am saying these denials are
13 being made based on 1005(d)(3). We are arguing over the
14 necessity to change 1005(d)(3). I'm giving you multiple
15 examples of this is the application of 1005(d)(3) and do
16 we not need to look at how it is constructed and maybe
17 reword it.

18 CHAIRMAN O'HARA: I think we've already
19 decided as a Commission not to look at the language
20 specifically in 49-1005. We are trying to agree with
21 concepts. I think what you are saying is disagreeing with
22 a concept.

23 MR. KELLEY: My concept is how is mileage
24 not reasonable, necessary, and cost effective?

25 CHAIRMAN O'HARA: We want them to look at

1 cost effective. I think we've agreed to that concept, and
2 we are going to maintain that.

3 MR. KELLEY: Thank you for the time.

4 CHAIRMAN O'HARA: At least my understanding.

5 I want to take one more public comment, just a
6 couple minutes. And then we'll take a break.

7 MR. JONES: It will be very short. Greg
8 Jones. Just to get back to what the Policy Commission is
9 here for and the points related to cost effectiveness and
10 so forth, the SAF is virtually an insurance company and
11 how they should do business.

12 Now, insurance companies look at cost primarily;
13 and insurance companies that buy a Cadillac, even though
14 they are in an accident and they repair a Yugo but they
15 get Cadillac expenses to do it, it is ridiculous. The
16 cost effectiveness and reasonableness of the program have
17 long gone in this program, years and years ago, when they
18 established cost ceilings.

19 Those cost ceilings are established with
20 everybody's funding mechanism built in, figuring they are
21 never going to get paid, et cetera, when you guys see
22 state lead jobs done for half the cost for the same kind
23 of corrective actions. And then you have these cost
24 ceilings out there, and the DEQ is hamstrung because
25 they've got to deal with these cost ceilings that are

1 already not cost effective. So it's just -- to me it
2 baffles me, that really what this Commission and the SAF
3 is is an insurance company. But you guys say it is a
4 technical review thing. Cost is of utmost importance in
5 this program and right now more so than ever in the state.
6 That's all I have to say.

7 CHAIRMAN O'HARA: Thank you. I think the
8 cost ceilings is a separate subject we might want to take
9 up under a future agenda item.

10 I want to take a break right now. Can we keep
11 it to five minutes? Does that keep us on time? Is that
12 okay? Thank you.

13 (Whereupon, a recess was taken from 10:52
14 o'clock a.m. to 11:03 o'clock a.m.)

15 CHAIRMAN O'HARA: I'm going to call back to
16 order. We're back on the record. This meeting is back in
17 order.

18 We are going to continue with Item Number 3, the
19 Senate Bill 1338. Just as a general comment, I would like
20 to note to both members of the public and the Commission
21 that we're really short on time. We've got about an hour,
22 and we've got a lot to get to. So I'll just ask if we can
23 make discussion as brief as possible on everything. I
24 don't want to limit discussion; but if we have to, we will
25 probably move some items to next month's agenda. Let's

1 try to get through, if we can.

2 On Senate Bill 1338, was there any other
3 comments from members of the public that would like to
4 speak on the bill? Any member -- Okay.

5 Commission, discussion, any more discussion?

6 Hal.

7 MR. GILL: I would like to make one comment.
8 Although I would love to hear Ian's -- his concept of
9 these issues on here, what I would really like to hear is
10 DEQ's problems with these so we can discuss this as a
11 Commission. I mean, it does no good if Ian says this is
12 my own personal because -- we can discuss it, but there's
13 no -- we're not really discussing an issue.

14 We need to know what is DEQ's take on these
15 particular items we are talking about so we can discuss
16 and work out the problems because that's what we are
17 supposed to do. That's one of our mandates, is to try to
18 make the program better. If this is a determination that
19 this is a problem with the program, we need to discuss it.
20 We are not hearing anything from DEQ as far as what their
21 opinion and what their problem with it is.

22 MR. BINGHAM: Is that for me?

23 MR. GILL: Just --

24 CHAIRMAN O'HARA: Go ahead, if you'd like
25 to. I know DEQ was invited to issue briefing papers, to

1 make a presentation at this meeting on these bills. I
2 haven't heard anything or seen anything.

3 MR. GILL: It has been on the agenda at
4 least three times.

5 CHAIRMAN O'HARA: Do you want to address
6 that or not?

7 MR. KELLEY: There is the briefing paper you
8 are looking for.

9 MR. BINGHAM: There's our position.

10 MR. JOHNSON: You have your response.

11 CHAIRMAN O'HARA: Any other discussion on
12 the bill? Would anyone --

13 MR. DENBY: I'm trying to draft up some
14 motions. I'm trying to draft this.

15 CHAIRMAN O'HARA: You want to take a minute
16 or two?

17 MR. DENBY: Give me about two more minutes.

18 CHAIRMAN O'HARA: We are going to come right
19 back to part A.

20 Part B was Senate Bill 1131. I had talked to
21 quite a few stakeholders. This is dealing with Weights
22 and Measures and vapor recovery. The sense that I got, it
23 was an issue that some of the Commission members feel that
24 we knew enough about or wanted to take a position on. And
25 I originally had it off the agenda, and it is back on.

1 I want to know, is there anybody who feels
2 strongly about Senate Bill 1131 and wishes to take a
3 position on this and explain it to the group?

4 MR. SMITH: Michael, it has to do with vapor
5 recovery and the CARB, California Air Resources Control
6 Board, rules. And I believe -- And somebody correct me if
7 I'm wrong. But the industry and the Weights and Measures
8 has come to consensus on both the legislation and the new
9 rule that's being rewritten.

10 No? John, can you give us an update on a -- a
11 quick update on 1131?

12 MR. PEARCE: Yeah. The bill is a consensus
13 bill as far as stakeholders I'm aware of and the
14 Department of Weights and Measures is concerned. The
15 rules are still in the comment and response forum.

16 MR. SMITH: There is consensus on the bill?

17 MR. PEARCE: The bill covers one aspect of
18 the rule. And that is the AVR limitation. As far as I
19 can tell, the stakeholders are --

20 MR. SMITH: So, again, Michael, rather than
21 voting on the exact language because we don't have the
22 exact language, again, the concept is it has both support
23 of the Department of Weights and Measures and the
24 regulated public.

25 CHAIRMAN O'HARA: Is that a concept you

1 members wish to vote on or get more information on it?

2 MR. SMITH: We can do a motion and support
3 it if we feel it's important for the constituents that we
4 represent, or we can just say that there is consensus out
5 there in the regulated public and with the Department and
6 let it go at that.

7 MS. JAMISON: Mr. Chairman, it sounds to me
8 like they don't need our help. So maybe --

9 CHAIRMAN O'HARA: I agree. I don't think
10 the concept is something to really make a judgment on.
11 Does anyone -- Is that okay?

12 MR. SMITH: Okay.

13 CHAIRMAN O'HARA: How is that motion coming?

14 MR. DENBY: I am on the third part.

15 CHAIRMAN O'HARA: Is there any other
16 UST-related legislation? I know there was a bill at the
17 last meeting dealing with the penny a gallon. Is there
18 any other bills out there dealing with USTs that we might
19 ought to be familiar with?

20 MR. LUGO: Jesse Lugo, Arizona Automotive
21 Trade Organization. You are referring to House Bill 2657,
22 increasing the one penny per gallon to two cents. It is
23 identical -- the bill is identical to what was passed back
24 in May of 2000 by the House and the Senate and vetoed by
25 Governor Hull. And the reason for that was the gasoline

1 prices were too high.

2 Under the bill, 2/10 of the cents of the net
3 revenue shall be credited to municipal tankholders. 8/10
4 of the cents of the revenue shall be credited to the
5 Assurance Account for the purpose of paying approved but
6 unpaid claims against the account and -- but no monies for
7 administrative costs.

8 The House since -- it's before the committee in
9 the House chaired by Representative Huffman. A couple
10 weeks ago the press indicated that certain legislators in
11 the House were told that only two bills would be allowed
12 by each individual to submit, so they are picking and
13 choosing which bills they are going to introduce. In
14 doing so, it doesn't appear that there's strong support at
15 this time to move the bill forward.

16 There were quite numerous Republicans that
17 indicated that they vowed not to increase taxes at this
18 time. Certainly, in our opinion, it is the right thing to
19 do irrelevant to party affiliations or whether it is an
20 election-year issue. If the Commission would like to
21 assist in the process, it's just a matter of contacting
22 the speaker and Chairman Huffman to move the bill forward.

23 CHAIRMAN O'HARA: Any Commission members
24 feel it's a concept that we should investigate and vote on
25 at this meeting or you want to take it up? I know it is

1 the same bill that we were in favor of, it seems, last
2 year; but we didn't get to voice our opinion prior to the
3 bill being vetoed.

4 MR. SMITH: Mike, I think as we talked about
5 the actuarial study and new things coming down the road
6 that might affect the State Assurance Fund one way or the
7 other, I think we ought to look at this as the year goes
8 by and see how those new changes might affect things and
9 then, at that time, look at supporting or not supporting
10 monies to increase the fund.

11 CHAIRMAN O'HARA: Anyone else?

12 MR. DENBY: Let's see what we've created
13 here.

14 MR. CARDON: Excuse me, Mr. Chairman.

15 CHAIRMAN O'HARA: Yes.

16 MR. CARDON: On that particular point, it
17 should be noted that there is a broad group of affected
18 property owners that would very much like to see the tax
19 increased. I'm not making a recommendation today that the
20 board take any action. I am simply noting that that's the
21 case. Thank you.

22 CHAIRMAN O'HARA: You bet.

23 That's been an open topic since we have been a
24 Commission, is the appropriate amount of money in the
25 fund. Obviously it is not appropriate. It hasn't been

1 for years. Maybe we will talk about this, if you'd like,
2 although the timing is not going to be good enough for the
3 legislation, at a later meeting and maybe have a separate
4 meeting whether or not adding funds to the State Assurance
5 Fund would be appropriate. Unless there is a contrary
6 opinion, I'm assuming we can put that off to another
7 meeting where we can study the issue in more detail.

8 MR. DENBY: I have some proposed language.
9 I won't do it as a motion yet so we can talk about it and
10 we don't have to get into all the formalities of motioning
11 and remotioning. Let me toss up the three proposed
12 paragraphs I have for the three proposed issues on 1338.

13 First one is -- And they go in order of the
14 three that we discussed: Encumbrance of the funds
15 submitted, the previously submitted materials, and then
16 1005.

17 Policy Commission supports the efforts of the
18 regulated community and the Department to resolve the
19 question of payment of corrective action costs that are
20 outside the scope of the pre-approved work plan but within
21 the encumbered amount by allowing these costs to be paid
22 without additional efforts and expenses by the Department
23 and the regulated community. Want me to read that again?

24 MS. JAMISON: One more time.

25 MR. DENBY: Policy Commission supports the

1 efforts of the regulated community and the Department to
2 resolve the question of payment of corrective action costs
3 that are outside the scope of a pre-approved work plan but
4 within the encumbered amount by allowing these costs to be
5 paid without additional efforts or expenses by the
6 Department and the regulated community.

7 And what I was trying to go for there was not to
8 obviously pick or choose language from the legislation but
9 to be able to say if it is encumbered, the idea is it
10 should be able to pay it within that encumbrance without
11 having to go through additional efforts from the
12 Department's standpoint or from the regulated community's
13 standpoint of having to refile for additional coverage.

14 MR. SMITH: Maybe just a point of
15 clarification, that it may not be out of the scope. It
16 may be out of the task but still within the scope of the
17 encumbered funds is maybe closer to what we want to say.

18 MR. BINGHAM: Thank you, Myron, because I
19 have no idea what "outside the scope" means.

20 MR. DENBY: Nor do I but --

21 MR. SMITH: I think outside --

22 MR. DENBY: -- it is used in 1005.

23 MR. BINGHAM: To say here is a scope of work
24 and you can do whatever else you want to do and it's going
25 to be -- no.

1 MR. SMITH: I believe it should read the
2 specific task but still within the scope of the encumbered
3 funds.

4 MR. BINGHAM: Specific task still within the
5 scope.

6 CHAIRMAN O'HARA: Elijah.

7 MR. CARDON: Question for Mike. Are we
8 assuming that all of this meets the test of
9 reasonableness, cost effective, et cetera; or should we
10 add that kind of language?

11 MR. DENBY: That's a good point.

12 MR. SMITH: I think that's covered
13 elsewhere, Elijah.

14 MR. BINGHAM: Not necessarily.

15 MR. CARDON: For clarification.

16 MR. BINGHAM: I don't believe it is covered.
17 If you are talking about what's pre-approved is covered,
18 if this is something else that was not a part of the
19 pre-approval, you can't -- I don't believe you can
20 automatically assume that --

21 MR. SMITH: No, that's what I thought. It
22 may not be within the exact task written but still within
23 the scope of the encumbered funds.

24 MR. DENBY: And be reasonable and necessary.

25 MR. SMITH: Right. But still it's been

1 pre-approved for that as reasonable and necessary for that
2 task or that scope. So, I mean, it's already been done.
3 It's already -- to get to this point, it's already been
4 approved as reasonable and necessary and cost effective.
5 It's just that the exact task that was pre-approved under
6 a general scope was not what was performed.

7 In other words, if I can, an analogy would be
8 that the task was to dispose of dirt in a drum. It was
9 found to be -- and that cost was approved at \$100. And it
10 was found that bins were just as easy, and it was at \$80.
11 You are still within the scope of soil disposal, but you
12 didn't do the exact task of putting it in drums. So
13 that's been pre-approved at \$100 as being reasonable and
14 necessary. But the exact task of in drums was changed to
15 in a bin. That's long winded.

16 MR. DENBY: How about if I just add at the
17 end of it --

18 MR. BINGHAM: That's what that means.

19 MR. DENBY: -- as long as they are
20 reasonable and necessary. So it would read, The Policy
21 Commission supports the efforts of the regulated community
22 and the Department to resolve the question of payment of
23 corrective action costs that are outside the specific task
24 of a pre-approved work plan but within the scope of the
25 encumbered amount by allowing these costs to be paid

1 without additional efforts and expenses by the Department
2 and the regulated community as long as they are reasonable
3 and necessary.

4 MR. BINGHAM: I don't think I got all that.
5 Read a little slower. She types faster than I think.

6 MR. DENBY: Policy Commission -- Policy
7 Commission supports the efforts of the regulated community
8 and the Department to resolve the question of payment of
9 corrective action costs that are outside the specific task
10 of a pre-approved work plan but within the scope of the
11 encumbered amount by allowing these costs to be paid
12 without additional efforts and expenses by the Department
13 and the regulated community as long as they are reasonable
14 and necessary.

15 MS. WOODALL: Mr. Denby, again, this is
16 referring to Senate Bill 1338?

17 MR. DENBY: Yeah.

18 CHAIRMAN O'HARA: Probably should reference
19 it.

20 MR. DENBY: In reference to -- We can do
21 that for all three paragraphs. I will just do an intro
22 reference.

23 CHAIRMAN O'HARA: Is that a motion?

24 MR. DENBY: If everybody is happy with that,
25 we can make that a motion.

1 MS. WOODALL: Would it be your intent that
2 this language be subsequently signed by the chairman and
3 then transmitted to the Governor, the director, the
4 speaker?

5 MR. DENBY: Yeah. Do we want to move them
6 all as one afterwards or move them individually?

7 CHAIRMAN O'HARA: Move one.

8 MR. DENBY: Go through them? Next one is
9 the question of submitted in writing beforehand or already
10 on file. Policy Commission supports -- Once again, they
11 are all going to start off very much the same. The Policy
12 Commission supports the efforts of the regulated community
13 and the Department to resolve the question of how much
14 information is required to be submitted in support of
15 corrective actions -- I will leave that open because I am
16 not sure exactly how to define that -- in support of
17 corrective actions specifically including information
18 already in the Department's files. To the extent the
19 Department already has such documentation on file,
20 adequate cross-referencing by the submitting party would
21 appear reasonable -- would appear to be a reasonable
22 option.

23 MR. CARDON: Michael, once again --
24 Mr. Chairman.

25 CHAIRMAN O'HARA: Elijah.

1 MR. CARDON: Does your motion include the
2 specific concept of not having the requirement of specific
3 bidding on all of the proposals?

4 MR. DENBY: That's the next one.

5 MR. CARDON: Thank you very much.

6 MR. BINGHAM: I would be a lot more
7 comfortable if that's limited to the pre-approval work
8 plan for what this thing is talking about.

9 MR. DENBY: Okay. So instead of saying
10 support of corrective action, say pre-approval work plan.

11 Let me read it once again and get more comments.
12 Policy Commission supports the efforts of the regulated
13 community and the Department to resolve the question of
14 how much information is required to be submitted in
15 support of a pre-approved work plan specifically including
16 information already in the Department's files. To the
17 extent the Department already has such documentation on
18 file, adequate cross-referencing by the submitting party
19 would be reasonable.

20 CHAIRMAN O'HARA: Good.

21 MR. DENBY: That was an easy one. Now for
22 the tougher one, tougher to get your fingers around too.

23 Policy Commission supports the efforts of the
24 regulated community and the Department to resolve the
25 question of cost effectiveness -- cost effective review of

1 corrective actions. The Policy Commission agrees that
2 cost effectiveness is important to the corrective action
3 review process and essential to the SAF process. However,
4 to the extent cost effectiveness review has resulted in
5 hardships to the regulated community or unnecessary
6 denials of corrective action costs, the Policy Commission
7 requests that the Department work with the regulated
8 community to resolve these concerns or that appropriate
9 legislative changes be made.

10 MR. BINGHAM: You want to read that one more
11 time?

12 MR. DENBY: You want me to read that again?

13 MR. BINGHAM: My brain is hurting.

14 MR. DENBY: It is much easier to read it
15 than to hear it. Policy Commission supports the efforts
16 of the regulated community and the Department to resolve
17 the question of cost effective review of corrective
18 actions. The Policy Commission agrees that cost
19 effectiveness is important to the corrective action review
20 process and essential to the SAF process. However, the
21 extent -- I'm sorry. However, to the extent cost
22 effectiveness review has resulted in hardships to the
23 regulated community or unnecessary denials of corrective
24 action costs, the Policy Commission requests that the
25 Department work with the regulated community to resolve

1 these concerns or that appropriate legislative changes be
2 made.

3 CHAIRMAN O'HARA: Elijah.

4 MR. CARDON: I would think that towards the
5 end of that we would -- we should add some language
6 that -- to specifically take the position of -- the
7 Commission takes the position that we -- that detailed
8 advanced bidding of all alternatives is not necessary.

9 MS. HANLEY: Mike, could I ask for a
10 clarification, please? The way it's written, it sounds
11 like cost effectiveness refers to the review process
12 rather than a component or criteria which is evaluated
13 within the correction action alternatives that are to be
14 decided upon which is best. So the review process is not
15 necessarily what needs to be cost effective but the chosen
16 alternative has to be looked at with regard to cost
17 effectiveness as a component of it.

18 MR. BINGHAM: State your name.

19 MS. HANLEY: I am sorry. This is Jeanene
20 Hanley. I was just wondering if it was worded
21 differently, it might change the intent or the meaning.

22 CHAIRMAN O'HARA: Thank you.

23 MR. DENBY: Does that cover it then?

24 CHAIRMAN O'HARA: I think, instead of saying
25 "the review."

1 MR. BINGHAM: Can I change a word then?

2 MR. DENBY: Yeah.

3 MR. BINGHAM: The mention of unnecessary
4 denials.

5 MR. DENBY: Sure. Would you like to just
6 get rid of it or change it to something else?

7 MR. BECK: It should be highlighted.

8 MR. BINGHAM: I'll pass on that one.

9 CHAIRMAN O'HARA: Would that be okay, when
10 he references hardships put in "such as"?

11 MR. CARDON: Yes, such as the requirement of
12 detailed bidding.

13 MR. DENBY: Of corrective action
14 alternatives?

15 MR. CARDON: Yes.

16 MR. DENBY: Okay. Why don't we do that.
17 We'll see if we've gotten your point.

18 Okay. So what's going to read now is, The
19 Policy Commission supports the efforts of the regulated
20 community and the Department to resolve the question of --
21 to resolve the question of the review of cost effective --
22 the cost effectiveness of corrective actions -- does that
23 make sense? -- resolve the question of the review of the
24 cost effectiveness of corrective actions.

25 The Policy Commission agrees that cost

1 effectiveness is important to the corrective action review
2 process and essential to the SAF process. However, to the
3 extent cost effectiveness review has resulted in hardships
4 such as the requirement of detailed bidding of corrective
5 action alternatives or denials of corrective action costs,
6 the Policy Commission requests that the Department work
7 with the regulated community to resolve these concerns or
8 that appropriate legislative changes be made.

9 CHAIRMAN O'HARA: Make a motion.

10 MR. DENBY: Anybody?

11 MS. WOODALL: Was that last sentence and/or
12 that legislative -- I wasn't sure.

13 MR. DENBY: "To resolve these concerns or
14 appropriate legislative changes be made."

15 MS. WOODALL: It was "and/or" or "or"?

16 MR. DENBY: "Or," yeah. It is an "or." It
17 is not an "and/or." I would like them to work it out
18 internally first, if they can.

19 MS. WOODALL: That's why I'm thinking the
20 "and/or" might be what you had in mind.

21 CHAIRMAN O'HARA: Maybe "and/or" because it
22 may take legislative action. It may be required.

23 MR. BINGHAM: I like it. I like "or."

24 MR. DENBY: I am of the "or" persuasion.

25 MS. WOODALL: Whatever. I just want to make

1 sure.

2 MR. DENBY: If there are no more comments, I
3 would like to make that as a motion. Do you want me to
4 read them all back or can we --

5 CHAIRMAN O'HARA: And we recommend this to
6 everybody, the Governor, the speaker of the house, okay,
7 that the chairman write a letter to that effect?

8 MS. JAMISON: Would Mr. Denby make that a
9 part of his motion, that we authorize the chair to send
10 these comments to all appropriate recipients including
11 legislative leaders, Governor, director.

12 MS. WOODALL: And to make any technical
13 changes that might be necessary in the text of the letter
14 on a final review.

15 MS. JAMISON: Like, complete sentences, you
16 mean, stuff like that?

17 MS. WOODALL: Yes, yes.

18 CHAIRMAN O'HARA: I think we have it on the
19 record, the detail.

20 MR. DENBY: I'll just read through them once
21 again and just sort of format the whole thing and then use
22 the following sentence to give us the ability to amend it
23 if we need to.

24 I would make a motion that the Policy Commission
25 put forth a letter to the -- put forth the following

1 comments in a letter to all appropriate recipients as set
2 forth in statute -- I believe is the list of what we said
3 before -- the following comments or the following motion:
4 A reference to Senate Bill 1338, the Policy Commission
5 supports the efforts of the regulated community and the
6 Department to resolve the question of payment of
7 corrective action costs that are outside the specific task
8 of a pre-approved work plan but within the scope of the
9 encumbered amount by allowing these costs to be paid
10 without additional efforts and expenses by the Department
11 and the regulated community as long as they are reasonable
12 and necessary.

13 Additionally, the Policy Commission supports the
14 efforts of the regulated community and the Department to
15 resolve the question of how much information is required
16 to be submitted in support of a pre-approved work plan
17 specifically including information already in the
18 Department's files. To the extent the Department already
19 has such documentation on file, adequate cross-referencing
20 by the submitting party would be reasonable.

21 Thirdly, the Policy Commission supports the
22 efforts of the regulated community and the Department to
23 resolve the question of the review of cost -- the cost
24 effectiveness of corrective actions. The Policy
25 Commission agrees the cost effectiveness is important to

1 the corrective action review process and essential to the
2 SAF process. However, to the extent cost effectiveness
3 review has resulted in hardships such as the requirement
4 of detailed bidding of corrective action alternatives or
5 denials of corrective action costs, the Policy Commission
6 requests that the Department work with the regulated
7 community to resolve these concerns or that appropriate
8 legislative changes be made.

9 In conclusion, I would also add to the motion
10 that we leave in here the ability to make any technical
11 corrections to this motion once it is actually written out
12 in case we need to change an "of" or a "the" to make it
13 make sense, we have the lateral authority to do that.

14 CHAIRMAN O'HARA: Second?

15 MR. SMITH: I'll second the motion.

16 CHAIRMAN O'HARA: Okay. It's been -- motion
17 has been moved and seconded. All those in favor.
18 Opposed? Abstained? So moved. Thank you.

19 I'm going to --

20 MS. JAMISON: Mr. Chairman, may I make one
21 related comment? This is actually related to an earlier
22 agenda item. Due to the expertise of our court reporter,
23 we are probably going to have 15 pages or maybe 20 pages
24 in the record on this discussion, whereas in the summary
25 of the minutes, we can have the nugget which is what we

1 agreed to recommend. Just something for people to be
2 thinking about as we process how we want our minutes to
3 be.

4 CHAIRMAN O'HARA: Great. Thank you.

5 I'm going to -- without objection -- If anybody
6 has an alternative viewpoint, let me know. I would like
7 to move forward to Agenda Item 6 and then come back to the
8 others. DEQ has taken a lot of time to prepare a
9 presentation.

10 Are you guys prepared? Are you ready, or do you
11 need -- They spent a lot of time preparing a presentation
12 on our behalf related to the paying of interest on State
13 Assurance Fund claims. And I would like to give them an
14 opportunity to show that.

15 This is going back on point, going back to
16 Item Number 2 in the administrative issue about the amount
17 of funding we have. I think there were -- Correct me if
18 I'm wrong, Patricia. There were three appropriations in
19 the last three years. The '99 appropriation has been
20 completely used. There is remaining funds of
21 approximately, I believe, \$3,000 for fiscal year '01,
22 which we can use.

23 MS. NOWACK: It is broken into two different
24 parts. The '99 appropriation is totally used up. The
25 2001 appropriation has, I think, something like 3,000

1 remaining in travel.

2 CHAIRMAN O'HARA: And 4,000 --

3 MS. NOWACK: 4,000 remaining in outside
4 services, which would be the court reporting.

5 CHAIRMAN O'HARA: We are not required to
6 split them that way, though, right?

7 MS. NOWACK: That's just the way we have
8 loaded them for ease of payment for my staff.

9 CHAIRMAN O'HARA: It is 7,000 in fiscal year
10 or another 10 in fiscal year '02. So we have 17,000.

11 MS. NOWACK: Right.

12 CHAIRMAN O'HARA: So -- And the court
13 reporter expenses are -- on average were \$288 per meeting,
14 which we can almost do it -- if Karen didn't want to do
15 it, we could almost get the three-day turnaround, if you
16 didn't want to keep those minutes. 2 percent or 3 percent
17 of that cost? So it would go up by an average of 60
18 bucks -- \$100 a month.

19 MR. BINGHAM: What are we paying now without
20 the three-day?

21 CHAIRMAN O'HARA: They said the average is
22 288.85.

23 MS. NOWACK: Correct.

24 MR. BINGHAM: You are increasing it by 50
25 percent. You are adding an additional \$1.25. You are

1 increasing it by 50 percent.

2 (Whereupon, an off-the-record discussion was
3 held.)

4 CHAIRMAN O'HARA: That would be another 100
5 bucks, which would be 1200 a year, which we have plenty of
6 funds. I am sure Karen would be in favor of not having to
7 keep the notes.

8 MS. HOLLOWAY: If I didn't have to keep as
9 many. Frankly, it's very difficult for me to read through
10 80 pages. I kind of look -- I'm more a generalist person.
11 I'm willing to do a simplified summary, particularly
12 including comments that were made on both sides, but maybe
13 even without identifying all the participants but at least
14 to reflect --

15 CHAIRMAN O'HARA: Okay. We'll take it back
16 up.

17 Go ahead.

18 MS. NOWACK: I would like to introduce Steve
19 Burr, who is our special counsel -- ADEQ special counsel.
20 And he is going to do a presentation on how we calculate
21 interest for the State Assurance Fund.

22 MR. BURR: Good morning. As most of you are
23 aware, there has been, I guess, a lot of discussion of
24 late about the meaning of 49-1052(k) and how the
25 Department should go about calculating interest for the

1 claims for coverage that have gone unpaid after 180 days.
2 There has been differing opinions on how to go about this
3 even within the Department. And over the last several
4 weeks -- Mr. Denby, I'm glad I finally have your
5 attention. Over the last several weeks -- Once an
6 associate, always an associate.

7 MR. DENBY: Exactly. Once a partner, always
8 a partner.

9 MR. BURR: We've had a number of internal
10 discussions to kind of try to hash through the issue,
11 really look at the statutory language closely, and try to
12 figure out the best way to approach this with three goals
13 in mind. First of all, we obviously want to be consistent
14 with the statutory language. Second, we want an approach
15 that's fair to everyone concerned. And, finally, we want
16 one that's practical to administer.

17 Some of the alternatives that we've talked about
18 internally would arguably save the Department some expense
19 in terms of interest payments but that those savings might
20 well be eaten up in transactional costs from applying that
21 particular approach. So we've tried to take a fairly
22 simple, straightforward, and, again, fair approach to this
23 issue.

24 Starting with statutory language, the three
25 issues that we really need to resolve are what's the

1 meaning of "complete" because interest accrues only on a
2 claim that is complete. It also has to be correct, and so
3 we have to decide what "correct" means. And then,
4 finally, the statute says that interest will not accrue on
5 a claim that is unpaid as a result of insufficient monies
6 in the area account for that claim. And we need to talk
7 about what is meant by "as a result of insufficient funds"
8 and talk about all three of those.

9 First of all, I think we all thought it was
10 pretty clear that the meaning of "complete" really needs
11 to refer back to 49-1052(b), which says that if the
12 Department doesn't -- the Department has to make a
13 determination of incompleteness within 45 days after an
14 application is submitted. And based on that, I think this
15 is pretty consistent with our historical approach.

16 If there is no determination of incompleteness
17 within 45 days of receipt, the application is complete and
18 it is complete from the day it's received. There is no
19 basis from at that point for ever saying that it was
20 incomplete. We may in the course of review still want to
21 get some more information in order to review the claim.
22 But we read the statute as -- I just heard you say "no"
23 because I said something. But, statutorily, the claim is
24 still complete on the day it's received.

25 On the other hand, if we request information

1 within the 45-day period, then the complaint -- the claim
2 does not become complete until we get all of the
3 information that was included in the request.

4 "Correct," now, we talked about internally two
5 different possible meanings of "correct." One is fairly
6 straightforward. It's basically substantive. It is that
7 the claim -- it's valid or it's meritorious, it is right.
8 The second possibility is to treat "correct" -- And I'm
9 sorry if this is kind of fuzzy up here, but you've got
10 your handouts. The second is basically procedural. We
11 can interpret "correct" as meaning that the claim is
12 supported by the necessary documentation.

13 The Department decided partly based on the
14 ordinary meaning of the term "correct" and also based on
15 administrative considerations that I talked about earlier
16 just to treat the meaning of "correct" as valid. We are
17 using the substantive definition. So in other words, if
18 you submit a claim and it's either from day zero or some
19 later time determined to be complete and it is also later
20 determined to be correct at least for some amount, it's
21 correct from the same day that it's complete because the
22 claim was always valid at least for that amount.

23 You may not have had the correct documentation,
24 and we may have needed more documentation along the line.
25 But that's a matter of the evidence for the claim being

1 complete. It's not -- doesn't have to do with the claim
2 actually being correct. So that's when the interest will
3 start to accrue. And I'll be going through some examples
4 later on that, I think, to the extent this is still a
5 little fuzzy will make this a little clearer.

6 As I think I suggested already, this obviously
7 would -- Yeah, you have a question.

8 MR. GILL: Yes. You may have just answered
9 this. For the meaning of "correct" in 49-1052, it says
10 complete and correct for it to be -- Now, in the
11 definition for "complete," you said if there is no
12 determination of incomplete within 45 days, it is termed
13 complete. Is it also termed correct? Is that what you
14 just --

15 MR. BURR: No, no, because -- Let me make
16 this clear. We're not keying "correct" from a particular
17 Department determination. That's completeness. Depends
18 on a Department determination. Either we fail to make a
19 determination of incompleteness within 45 days, and you
20 are complete from day one or day zero, as my example says;
21 or the Department asks for information during that 45-day
22 period and you have to supply the additional information.
23 Then you are complete from a later date.

24 "Correct," since we are interpreting "correct"
25 to mean that you had a valid claim, okay, it was always

1 valid. It was valid. If it was valid, it was valid from
2 the day you submitted it. So really the date is going --
3 the key date is going to be -- for any claim that's
4 determined to be at least in part correct, the key date is
5 going to be the date it is complete. That's really what
6 is going to start the clock for interest payments with one
7 caveat, and it is our next subject.

8 And the statute says that if a claim is not paid
9 as a result of insufficient monies in the area account,
10 then interest does not accrue. Again, we are trying to
11 take a fairly simple, straightforward approach to this.
12 If there are insufficient funds in the account to pay a
13 claim, the claim can't be paid regardless of what the
14 Department has done, regardless of where we stand in
15 review of that claim.

16 And so we are taking an approach that if a claim
17 is not paid as a result -- the claim is not paid as a
18 result of insufficient monies in the area account whenever
19 funds in the account are insufficient to pay the claim,
20 regardless of whether the Department has completed its
21 review at that time or not. On the other hand, if funds
22 later become available -- so you now have a situation
23 where the Department has not completed its review but
24 funds are available -- then you would start the interest
25 clock. One of our examples gets to that point.

1 Let's start with the first scenario. We're
2 hypothesizing a claim for \$100,000 on day zero. The
3 Department does not make a request for information until
4 day 60. Gets a response on day 70. On day 180, interest
5 will become due if funds are available and they are. On
6 day 230, we complete our review and determine that
7 coverage for \$90,000 should be awarded. The funds are
8 still available. There is no appeal.

9 The way this claim would be handled is we have a
10 correct claim for \$90,000 received on day zero. The claim
11 was complete as of day zero because we did not determine
12 incompleteness within the 45-day review period. So for
13 this claim, interest is owed for the 50-day period
14 starting from day 180 to day 230. Does that make sense?

15 Here we go. Scenario 2. Again, a claim for
16 \$100,000 on day zero. A request for information this time
17 on day 30. The response is submitted day 40. Funds are
18 available on day 220. Coverage for \$90,000 again is
19 awarded. The funds are still available. There is no
20 appeal.

21 Okay. We've again got a correct claim for
22 \$90,000 on day zero. However, that claim was not complete
23 until day 40 because in this instance we asked for the
24 additional information in time. We made the finding of
25 incompleteness within the 45-day review period, and the

1 necessary information was not submitted until day 40. In
2 this case, the interest is owed only for ten days from
3 day 220 to 230. Does that make sense?

4 Scenario 3. We have another claim for \$100,000.
5 We have a request for information at day 30. Again, a
6 response at day 40. This is picking up where the other
7 one left off. Interest is due if funds are available, and
8 they are on day 220. We award coverage for \$50,000. The
9 claimant, not surprisingly, appeals. Funds are available
10 on the day of the appeal. The final decision on the
11 appeal is that the claimant is due an additional \$10,000
12 in coverage because after all, the Department couldn't be
13 a whole lot wronger.

14 Now, here it is a little more complicated; but
15 still I think we kept it fairly simple and easy to
16 administer. We had a correct claim for \$60,000 received
17 on day zero. Ultimately, that's the amount that was
18 determined to be correct; and, again, the approach is it
19 was all correct. It doesn't matter that it ended up going
20 on appeal for \$10,000 to be determined to be correct.
21 This is, as I understand it, a little bit different
22 approach than what we have taken in the past.

23 Again, the claim was complete on day zero; is
24 that right? That's not right. This one is complete on
25 day 40, but I think the calculation is correct. It is the

1 same as scenario 2. But the basic point is that interest
2 is owed on \$50,000, the part we initially approved for
3 that 10-day period, and on \$10,000 for the 145-day period
4 because that's when the appeal ended and that's when the
5 additional \$10,000 was awarded. And, again, this is
6 assuming we pay right away basically after the appeal.

7 MS. NOWACK: Everybody take a pen and mark
8 your little papers so this doesn't come up in the future
9 that claim's complete on day 40.

10 MR. BURR: Yeah. Okay. And this is finally
11 a scenario to illustrate the insufficient funds approach.
12 Here we have a claim for \$100,000. Request for
13 information on 60 and response on 70. This is obviously a
14 late request, so we are going to go back to day zero. So
15 interest is due on funds available on day 180. However,
16 in this case they are not. Funds become available,
17 however, on day 220. On day 230, we award \$90,000. There
18 is no appeal.

19 So we received a correct claim for \$90,000 on
20 day zero, and it was complete on day zero because we were
21 late in making our -- in determining completeness.
22 Interest is owed on \$90,000 for 10 days. Had the funds
23 been available on day 180, interest would have accrued
24 from that date. However, because they did not become
25 unavailable until day 220, that's when interest starts to

1 accrue as explained in the bottom bullet.

2 I think that's the last slide. Any questions?

3 CHAIRMAN O'HARA: Looks good. Thank you.

4 Very good.

5 Any comments from the Commission members?

6 Understandable?

7 Thanks you, guys. Appreciate it.

8 MS. WOODALL: Our record should reflect a
9 copy of Mr. Burr's PowerPoint presentation has been
10 received by the court reporter and marked as Exhibit 2.

11 CHAIRMAN O'HARA: Great. Thank you very
12 much.

13 MR. BINGHAM: What about the other
14 information received? We didn't talk about them.

15 CHAIRMAN O'HARA: Laurie, can I ask you a
16 question quickly? Ian brought up a good point. We have
17 gotten quite a few letters from members of the public both
18 e-mailed to us. I think they weren't specifically
19 mentioned, but they were generally mentioned. Should they
20 be exhibits?

21 MS. WOODALL: To the extent you are going to
22 talk about a piece of paper in the hearing, my
23 recommendation would be that you have it marked as an
24 exhibit so later on someone who looked at the transcript
25 could know what you were talking about.

1 CHAIRMAN O'HARA: We've had quite a few.

2 MR. DENBY: We had three, or do you have
3 more than three?

4 CHAIRMAN O'HARA: Can I do that after the
5 meeting with her or on the record?

6 MS. WOODALL: Have you talked about these
7 records on the record?

8 MR. DENBY: These were the general
9 discussions earlier when we were talking about people
10 having written us.

11 CHAIRMAN O'HARA: I've got briefing papers.

12 MS. WOODALL: My suggestion would be that
13 they be -- if no one else objects, that they be marked as
14 exhibits with the understanding that these exhibits that
15 will be marked after the proceedings are correspondence
16 received by all members of the Commission which they had
17 and reviewed prior to their discussions concerning the
18 legislation today.

19 CHAIRMAN O'HARA: I'm sorry.

20 MR. DENBY: The authors of these things are
21 here. Do you want to give them a chance to talk about
22 them? They are call to the public, at which point in time
23 they can say anything they want anyway. I know one has
24 talked. The others if they wanted to talk --

25 CHAIRMAN O'HARA: Anybody wishing to speak

1 on their submissions to the Commission can do so now. I
2 think they already have, so I'll admit them into the
3 record.

4 MS. WOODALL: Yes.

5 CHAIRMAN O'HARA: I'll do that after the
6 conclusion of the meeting. Thank you. There is quite a
7 few.

8 Any other questions on the interest -- paying
9 interest on claims, any comments? We've got about seven
10 minutes.

11 MR. GILL: I can complete my section.

12 CHAIRMAN O'HARA: Go ahead, Hal, please do.

13 MR. GILL: I'll just wait till next week.

14 CHAIRMAN O'HARA: You want to wait till next
15 week?

16 MR. GILL: Next meeting.

17 MR. BINGHAM: Don't tell me next week.

18 MR. GILL: I think I need to know, back to
19 the issue of the letters that have been submitted, which
20 ones are we submitting and also -- See, I don't know which
21 ones because I had one that John Pearce had asked me to
22 enter. You may have already received it. I thought you
23 had. So I just need to know which ones.

24 MR. BEAL: I doubt that's true.

25 MR. DENBY: We can ask the committee

1 members. I received three letters. I did not receive one
2 from John.

3 CHAIRMAN O'HARA: You didn't receive that?
4 I put that on an e-mail to everyone.

5 MS. HOLLOWAY: Who is that one from?

6 MR. DENBY: John.

7 MR. SMITH: February 22nd.

8 CHAIRMAN O'HARA: There was, like, five
9 attachments to the e-mail. Did you get them all? It
10 said, Please review all these before the next meeting.

11 MR. GILL: I received it.

12 CHAIRMAN O'HARA: They were all Word
13 documents. It said, Please review these and prepare to
14 discuss.

15 MS. WOODALL: Since it appears,
16 Mr. Chairman, that all of the members have received at
17 least three, perhaps, you could at this time mention the
18 date and the author of the letter of the three that were
19 received and the court reporter could mark those in
20 sequence.

21 CHAIRMAN O'HARA: If I know the three that
22 were received. What did everyone receive?

23 MS. HOLLOWAY: One from Britt Callahan.

24 CHAIRMAN O'HARA: I did get one from
25 Callahan. Did I submit those to you, or those were

1 submitted directly?

2 MR. DENBY: I think they came directly to
3 us.

4 MR. BEAL: I didn't get it.

5 MS. HOLLOWAY: And there was one this
6 morning.

7 MR. DENBY: Which is the -- I got Mogollon
8 and I got Jones.

9 CHAIRMAN O'HARA: I got a letter from
10 Mogollon Environmental Services. I think everyone
11 received directly.

12 MS. WOODALL: Which would be Exhibit 3.

13 CHAIRMAN O'HARA: Mark this as 3. I feel
14 like I'm at trial here.

15 We've got a letter from ASO. I don't have a
16 copy, I don't believe, with me.

17 MR. BINGHAM: ASA.

18 MR. JOHNSON: ASA.

19 CHAIRMAN O'HARA: Oh, ASA. Exhibit 4.

20 Has everyone received this?

21 MR. SMITH: Yes.

22 CHAIRMAN O'HARA: I received -- I don't know
23 that you guys received Greg Jones' letter. That was
24 already submitted.

25 I got letters sent to me by John Pearce. That

1 was the one I sent in the e-mail. It should be, I think,
2 four letters in total. I'll submit these in the exhibits.
3 Check when you get back. If you haven't received this,
4 send me an e-mail and I'll resend it.

5 This will be Exhibit 5, Exhibit 6.

6 MS. WOODALL: And Exhibit 6 is?

7 CHAIRMAN O'HARA: Another letter from John
8 Pearce.

9 MS. WOODALL: From Mr. Pearce, okay.

10 CHAIRMAN O'HARA: A briefing letter from
11 Senate Bill 1338, Exhibit 7. I think that's probably it.

12 There was one from Brian Beck, right? We didn't
13 discuss this, though. This didn't -- we didn't get it on
14 the agenda.

15 MR. CARDON: Mr. Chairman.

16 CHAIRMAN O'HARA: Yes, sir.

17 MR. CARDON: Coming back real quickly to the
18 presentation that was made, wouldn't the Commission want
19 to address and take a position with respect to wanting to
20 do all possibly that can be done to avoid interest? The
21 point is that there is some that can't be avoided because
22 of the lack of funds.

23 Shouldn't this Commission -- I would like to
24 suggest that we either vote now or put it as a matter for
25 the next meeting that the Commission is in favor of doing

1 all that is necessary both from the Department's
2 standpoint and from the private sector standpoint to avoid
3 the imposition of interest charges on claims.

4 CHAIRMAN O'HARA: Sure. It's quite high now
5 at 8 percent.

6 MR. CARDON: Maybe we need more discussion
7 on that; but I think before we leave that particular
8 point, we ought to very clearly make ourselves known on
9 that.

10 CHAIRMAN O'HARA: I think it is important to
11 mention that some of that could be avoided due to the
12 insufficiency of money. My understanding is if it is --
13 if money is not available, then they don't pay interest.
14 It is only when the money is available and the claim is
15 not processed.

16 MR. CARDON: I stand corrected on that
17 point. Shouldn't we take a position as a Commission that
18 we want to clean up the act, if you will, so to avoid the
19 imposition of interest?

20 CHAIRMAN O'HARA: I think it deals directly
21 with the claims backlog. And if that's something we want
22 to take up at that time or we can give that to a committee
23 or you want to take it on now as part of that issue?

24 MR. CARDON: Whatever you feel would be
25 appropriate.

1 CHAIRMAN O'HARA: We are kind of running out
2 of time.

3 MR. BINGHAM: I got a meeting.

4 MR. SMITH: Next week.

5 CHAIRMAN O'HARA: I need to make a general
6 call to the public, too. We only have several minutes.

7 MR. SMITH: Mike, before you do that,
8 because there is probably some important dates for
9 Number 5, maybe 5A and B.

10 CHAIRMAN O'HARA: We are going to postpone 4
11 till the next meeting.

12 Five is DEQ updates. Is there any important
13 dates coming up, Patricia or Ian, that you wanted to
14 publicize to the general public?

15 Ian, do you have any updates you want to
16 publicize at this point?

17 MR. BINGHAM: For cost ceilings?

18 CHAIRMAN O'HARA: We can postpone that one
19 until next meeting unless there is something between the
20 next two meetings you need to get out.

21 MS. NOWACK: We did have two meetings with
22 stakeholders, one on the cost ceilings where there was
23 approximately 30 people from the public that attended.
24 There was a lot of good, healthy discussion in those
25 meetings. And we will have other meetings on cost

1 ceilings probably in April.

2 CHAIRMAN O'HARA: Okay.

3 MS. NOWACK: We also had meetings on the SAF
4 application where we got good comments from the public.
5 And we probably won't have another meeting on that until
6 May. So those dates have not been established yet.

7 CHAIRMAN O'HARA: Great. Thank you. We'll
8 have ADEQ updates at the next meeting also.

9 General call to the public. At this time, is
10 there anyone who wishes to speak?

11 MS. CALLAGAN: Hi. I'm Theresa Callagan. I
12 am representing the regulated community as well as being
13 an individual taxpayer here. I would like to make a
14 comment on the interest payment issue. And my comment is
15 it seems to me that paying interest on these claims is --
16 seems like an unconscionable use of taxpayer money and
17 that that money should either be used to pay claims or to
18 adequately staff the ADEQ so that this backlog issue just
19 gets resolved. It just doesn't seem right to me that the
20 Department is even paying interest on anything. It
21 just -- there shouldn't be the backlog that there is.

22 CHAIRMAN O'HARA: Thank you.

23 Mr. Kennedy.

24 MR. KENNEDY: John Kennedy, part of the
25 regulated community. I wanted to make sure that the

1 Commission is aware, there is a meeting scheduled -- and I
2 didn't hear from DEQ, on a DEUR process. I had not
3 received notice. I have heard of it on the 29th of March.
4 And I think it definitely will impact the operation of UST
5 closures where risk-based corrective actions are
6 considered where you are going to have to provide a DEUR.
7 And I have not seen any notice, and I will look for it. I
8 think it would be very important that this Commission be
9 aware of it.

10 CHAIRMAN O'HARA: Great. Any other comments
11 from the public? Public comment?

12 MR. GILL: Just one thing. Since we are not
13 getting to my section, the one thing I do need to say is
14 we are finally starting the guidance document review
15 process again. There is a meeting scheduled -- the agenda
16 should be going out today -- for Friday at 9:00 in
17 Room 1706.

18 MR. SMITH: This Friday, Hal?

19 MR. GILL: This Friday, 1706. And it deals
20 with RBCA, Section 6 of the guidance document.

21 MS. NOWACK: What time was that, Hal?

22 MR. GILL: Nine to noon, 1706.

23 CHAIRMAN O'HARA: Okay.

24 Any other comments from any of the public?

25 Greg.

1 MR. JONES: Greg Jones. I have one comment
2 in regards to your discussions related to court reporting
3 and costs and minuscule things really related to the whole
4 program as a whole. And the insurance rate at 8 percent,
5 to me that's a drop in the bucket for what's being charged
6 to this fund for corrective actions. And in one breath,
7 you can say let's get rid of competitive bidding
8 requirements that are obvious savings -- that would
9 realize to the fund obvious savings on the bulk of the
10 corrective actions. And then in one breath you say, hey,
11 we are worried about costs and insurance rates. And you
12 guys don't even address these inflated cost ceilings in a
13 way that they are not going -- there is not going to be
14 any checks and balances for this program.

15 And just the same as you can realize that this
16 is a competitive environment, like most of the state
17 government agencies do with state procurement, that the
18 savings could easily pay for more people in ADEQ to review
19 things and still realize a savings to the state. But to
20 say, hey, let's get rid of this one action, competitive
21 bidding, et cetera, and the wording that's going through
22 the state legislature to say it's okay. To tell you the
23 truth, there is a bigger problem with this; and it needs
24 to be addressed. Whether you guys do it or not, it needs
25 to be brought up.

1 CHAIRMAN O'HARA: Yeah. Just as a comment,
2 I will agree with you. The cost ceilings are a big issue,
3 probably the biggest contributor to the funding of the
4 state. So it's an issue, I think, we ought to take up.
5 It is in legislation. It is something we can recommend
6 legislation to change. We ought to have that on a future
7 agenda.

8 Any other comments from members of the public?

9 Okay. Thank you. The next meeting is going to
10 be April 17th.

11 MR. SMITH: Mike, I have one comment. There
12 is a meeting of the groundwater study subcommittee today
13 at 1:00 p.m. in Room 1705.

14 CHAIRMAN O'HARA: Great.

15 MR. KELLEY: 1:00 or 1:30?

16 MR. SMITH: 1:00, isn't it? 1:00 o'clock.

17 CHAIRMAN O'HARA: Our next meeting is
18 April 17th, 2002, and hopefully it will go a little
19 quicker or we are going to start having twice-a-month
20 meetings. I am sure everybody is in favor of that.
21 Meeting adjourned. Thank you.

22 (Whereupon, Exhibits No. 1-7 were then
23 marked by the reporter.)

24 (Whereupon, the proceedings adjourned at
25 12:05 o'clock p.m.)

3

4 I, JENNIFER SCHUCK, Certified Court
5 Reporter, Certificate No. 50020, State of Arizona, do
6 hereby certify that the pages numbered from 1 to 120,
7 inclusive, constitute a full, true, and accurate
8 transcript of all proceedings had in the foregoing matter,
9 all done to the best of my skill and ability.

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